

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 10, 2023

The Honorable Leslie Gardner
C.B. King United States Courthouse
201 West Broad Avenue, 3Rd Floor
Albany, GA 31701-2566

Dear Judge Gardner:

I am writing this letter with enthusiastic support for Garrett Eldred, who is applying for a clerkship in your chambers. I write to share my experiences as his professor, and why he has demonstrated that he would be a great fit for a clerkship.

Garrett is a Haitian American, first-generation law school student with many admirable qualities. I first noticed those qualities when he attended my Prison Law and Policy class this past semester, where we cover issues facing incarcerated people, caselaw on their rights, and how, as a policy matter, we can fix the American criminal justice system. Garrett's comments were always illuminating and showed a genuine hunger for community service, a humbleness to understand the issues, along with grit and wisdom.

Garrett's childhood in Atlanta would lead him to both good and bad parts of town, where he developed a keen understanding of how to connect with people regardless of their background or differences. I believe this characteristic is indicative of why he would make a great clerk. Through my conversations with Garrett and his participation in my course, I have found him to be both of strong conviction, but also with the discernment to know how to disagree without being disagreeable. Garrett's also possesses a consistent professionalism that would make him an ideal clerk, and that is why I am proud to offer this letter on his behalf.

Garrett deeply desires to make change in the world. During his days in undergraduate school, Garrett created the "It Could Be You Initiative," a program designed to help the homeless population in and around Georgia State University. He has continued that service at Georgetown Law through his service in the Black Students Association, the RISE program, and Christian Legal Society.

Garrett also has the legal chops to be worthy of a clerkship. He won the trial advocacy competition; he is an editor on the Georgetown Law Journal; and he scored an A in my class, one of the best grades on my admittedly difficult exam that tests both the application of legal principles and policy issues. He has also received several awards. His GPA has consistently gone upward since his first semester (a trait I see with many first-generation law school students), which provides a positive trend for his clerkship prospects. And he has secured a summer associate position at Baker & Hostetler in Atlanta, where he plans to practice.

But what makes Garrett special is his personality. He is a thoughtful and engaging person. The kind of person who is equally adept at discussing criminal justice policy, the rules of statutory interpretation, or college football. He was a joy as a student, and I have no doubt he will make an excellent clerk. And he desires a clerkship for the right reason, as he wants the experience to become a better lawyer and to serve the public.

If you need any additional information, please do not hesitate to contact me.

Sincerely,

Shon Hopwood
Associate Professor of Law

Shon Hopwood - srh90@georgetown.edu

**FROM THE CHAMBERS OF SPECIAL MASTER MINDY MICHAELS ROTH
UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS
717 MADISON PLACE
WASHINGTON, DC 20439**

June 13, 2023

To Whom It May Concern:

I am pleased to provide a recommendation for Garrett Eldred. I am a Special Master at the United States Court of Federal Claims, the court with exclusive jurisdiction over claims related to vaccine injuries. Garrett was an intern in my chambers during the fall semester of his 2L year of law school in 2022. I was quickly impressed by Garrett's ability to readily grasp new concepts. He was also a delight to have in Chambers.

Garrett attended status conferences, a hearing, drafted memorandum and assisted with the drafting of decisions on Motions. Additionally, I assign each of my interns the task of drafting a memorandum on a challenging legal/medical issue. These assignments demand a thorough review of medical records and the study of medical conditions. This adds an element of complexity to the legal writing process with which most law students are unfamiliar. Additionally, these assignments call for more foundational legal writing exercises, such as the summarization of facts and procedural history. Finally, and most importantly, impeccable legal analysis is vital in all decisions, as Vaccine Program cases are appealable to the United States Court of Federal Claims. Garrett was assigned the task of drafting a decision in a case in which a complicated medical issue was involved. Garrett's work was on par with what I expect of my new law clerk hires. Garrett showed growth in his writing abilities over the semester due to his genuine desire to learn and improve.

Garrett is intelligent, diligent, mature, and professional, as was demonstrated through his demeanor and work product. Working with Garrett was a genuine pleasure. I am confident that he would be as welcome an addition to your chambers as he was to my chambers. In the event you may wish to discuss Garrett's qualifications further, I can be reached at (202) 403-9006.

Sincerely,

Mindy Michaels Roth
Mindy Michaels Roth
Special Master

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The Honorable Leslie Gardner
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Dear Judge Gardner:

It is my sincere pleasure to provide my highest and most enthusiastic recommendation for Mr. Garrett Eldred to be a judicial law clerk in your chambers. Mr. Eldred is one of our shining stars at Georgetown Law. An Opportunity Scholar, he is an award-winning student advocate and an editor of the prestigious *Georgetown Law Journal*. He is a student who has successfully balanced a broad array of extracurricular activities with academic excellence and an ongoing commitment to serving the public interest. He would make an excellent law clerk in your chambers.

I have known Mr. Eldred for almost two years. He has been a model student in both my 1L Property course (Spring 2022) and my upper level Copyright Law course (Fall 2022). Additionally, Mr. Eldred served as my Research Assistant during the Fall 2022 semester, during which time I observed him seamlessly juggle his coursework, research, and extensive extracurricular activities. As Mr. Eldred's professor, supervisor, and mentor, I have seen his passion for the law and his commitment to excellence firsthand. We have had numerous conversations discussing his legal aspirations. He always sat in the front row of my class and consistently offered contemporary applications of our coursework, some of which I incorporated into my PowerPoints to teach the rest of the class.

Mr. Eldred's academic achievement in law school has steadily improved each semester and I am confident that his legal analysis and writing skills are very strong. He received an A- in my copyright course this past semester, just missing the cutoff for an A by a few points. His final exam demonstrated mastery of the wide range of legal concepts covered in the class, and strong organizational, critical thinking, and writing skills.

Even more important is Mr. Eldred's work ethic, drive to learn and develop mastery, and commitment to obtain work and extracurricular experiences that will help him to continually build his research, writing, and advocacy skills. His achievements here are extraordinary. As an undergraduate he received the aptly named honorific of "Mr. Unstoppable"—indeed, Mr. Eldred has continued to be unstoppable at Georgetown Law! He won first place in the Georgetown Greenhalgh Trial Advocacy Competition and was named an Honored Advocate in the Greene Broillet & Wheeler National Civil Trial Competition. Mr. Eldred is the first Black man to win Georgetown's Greenhalgh Trial Advocacy Competition. (His co-counsel was the first Black woman to obtain the same feat.) Mr. Eldred aspires to be the first Black man to be editor-in-chief of the *Georgetown Law Journal*, and I am confident he can achieve this!

Mr. Eldred hopes to one day be a litigator and courtroom attorney. To this end, in addition to his demanding extracurricular activities, he has pursued a diverse set of work experiences that set him up to be an enormously successful judicial law clerk and attorney. Last summer, he worked in three settings, serving as a law fellow at AT&T, Balch & Bingham LLP, and Kilpatrick Townsend & Stockton LLP in Atlanta. (The three impressive offers demonstrate what an attractive and sought after candidate Mr. Eldred is!) Mr. Eldred wrote numerous memoranda and drafted a variety of legal documents in these roles. He further honed his legal research and writing skills with an externship in the court of Federal Claims, as an Editor of the *Georgetown Law Journal*, and as my research assistant. Mr. Eldred is conscientious and deliberate about seeking out opportunities – such as this clerkship – that will make him the very best advocate he can be.

As my research assistant, Mr. Eldred handled numerous assignments and impressed me with his thoroughness and attention to detail. On one assignment applicable to his work as a clerk, Mr. Eldred provided me with questions to ask during Georgetown's Law's moot of *Warhol v. Goldsmith*, a copyright case before the Supreme Court in which I was asked to serve on the panel questioning the attorney arguing the case before the Supreme Court. Mr. Eldred's questions were sharp and relevant, and were among questions we also debated in my Copyright class amongst the students as we discussed the viability of the arguments made in the case.

At the same time, Mr. Eldred has been and continues to be committed to public service work. While in college, he established the "It Could Be You Initiative," which sought to feed, clothe, and uplift the homeless population surrounding Georgia State University. At Georgetown Law, Mr. Eldred serves as the Community Service Chair of the Black Law Students Association and is an avid participant in the school's Christian Legal Society. These endeavors demonstrate Mr. Eldred's commitment to not only honing his skills as a writer and advocate, but also his commitment to being a grounded servant for humanity. I am confident that Mr. Eldred will continue to dedicate himself to pro bono work in the public interest to help others less fortunate to have the opportunities that were so critical for him.

That Mr. Eldred performed his work for me so well while being involved in numerous and significant extracurricular activities is notable. Mr. Eldred's discipline and time management skills, which he learned during his time as a Division 1 Student Athlete,

Madhavi Sunder - ms4402@georgetown.edu - (202) 662-4225

enable him to give serious attention to all of these organizations and activities without neglecting his coursework, which is truly admirable.

Mr. Eldred's impressive resume notwithstanding, my favorite thing about Mr. Eldred is his warm, charismatic, and kind personality. He is amicable and adaptable, able to get along with pretty much anyone. Mr. Eldred had a nomadic upbringing with multiracial parents. This allowed him to come in contact with people from all walks of life, and equipped him with a welcoming and inclusive spirit. As a clerk, Mr. Eldred will be working very closely with his judge and fellow clerks. I am confident that Mr. Eldred will be a joy and delight to work with.

I unreservedly give my very highest recommendation to Mr. Eldred. I am confident that he has the work ethic, skillset, personality, and intellectual acuity required to be a successful judicial clerk. Thank you for your consideration, and please feel free to contact me with further questions at ms4402@georgetown.edu.

Sincerely,

Madhavi Sunder
Frank Sherry Professor of Intellectual Property
Associate Dean for International and Graduate Programs

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600 New Jersey Avenue, NW
Washington, DC 20001

June 10, 2023

The Honorable Leslie Gardner
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Dear Judge Gardner:

I am writing to recommend Garrett Eldred for a clerkship. Garrett was a student in my Criminal Law class. He was an active participant in class discussion and stopped by frequently during office hours. I serve as a faculty advisor to the Georgetown Black Law Student Association, and I have also gotten to know Garrett through his leadership roles in that organization, including his work as chairperson for community service. Based on these experiences I recommend him with great enthusiasm.

Garrett is an extremely bright, ambitious, and disciplined student with a great work ethic. He distinguished himself in my course with his insightful legal analysis and strong communications skills. I think these qualities would serve him well in a clerkship. They are evidence of the high expectations Garrett sets for himself, and his ability to deliver. As a member of the prestigious Georgetown Law Journal, which is the flagship legal journal at our school, Garrett has had an excellent opportunity to advance his research and writing skills. I am impressed, but not surprised, that Garrett has performed exceptionally in trial advocacy competitions, including finishing in first place in the Georgetown Greenhalgh Trial Advocacy Competition.

I should also note that Garrett is an exceptionally kind and mature law student. He is warm, respectful, has a fine sense of humor and a great personality. He would be the kind of law clerk that everyone in the courthouse likes, respects, and admires. He is very excited about the potential of a clerkship and I have no doubt that you would find him to be an asset to your chambers. I know that you have many highly qualified applications. I respectfully urge your consideration of Garrett. I think you would be extremely satisfied with his work and his character.

Respectfully,

Paul D. Butler
The Albert Brick Professor in Law

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GARETT ELDRED

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WRITING SAMPLE

The following is a case comment I wrote in June 2022 for the Georgetown University Law Center Law Journal Write-On Competition. I was required to draw on a limited packet of sources to produce a comment no longer than 2,200 words, excluding footnotes. The comment was titled “Inaction Calls for Action: Why the Tenth Circuit’s Determination that the Defendants in *Strain* were not Deliberately Indifferent was Incorrect.” This case comment is my own independent work.

I. Introduction

“The Fourteenth Amendment prohibits deliberate indifference to a pretrial detainee’s serious medical needs.”¹ Circuit courts have disagreed on the proper standard for a pretrial detainee’s deliberate indifference claim.² This disagreement stems from how the courts interpret the Supreme Court’s holding in *Kingsley v. Hendrickson*.³

Kingsley set forth an objective standard for pretrial detainee excessive force claims which only require that an official *should have* known that his actions were unreasonable.⁴ The Court chose an objective standard as opposed to the subjective standard used for convicted prisoners’ excessive force claims which require a subjective display of malicious intent.⁵ The Court reasoned that there is a greater need to protect pretrial detainees than convicted prisoners because pretrial detainees are presumed completely innocent.⁶ Thus, the Court set forth a more lenient standard, easing the burden on pretrial detainees who seek redress for their suffered harm.⁷

The Second and Ninth Circuits have extended *Kingsley*’s objective standard to pretrial detainee deliberate indifference claims.⁸ The Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits have declined to extend *Kingsley*’s objective standard and instead set forth a more stringent subjective standard, requiring a plaintiff to show proof that a jail official was subjectively aware of a pretrial detainee’s serious medical need.⁹

A. Background of Strain

The morning after Thomas Pratt (Mr. Pratt), a pretrial detainee, was booked into the Tulsa County Jail (the Jail), he complained of alcohol withdrawal and requested detox mediation.¹⁰ A nurse conducted a drug and alcohol withdrawal assessment of Mr. Pratt that afternoon where he informed her that he had habitually drank fifteen-to-twenty beers per day for the past decade.¹¹

Staff admitted Mr. Pratt to the Jail's medical unit, conducted a mental health assessment, documented his withdrawal symptoms, but never gave him the requested detox medication.¹²

Days later, a jail nurse conducted a withdrawal assessment, which revealed worsening symptoms.¹³ The nurse finally gave Mr. Pratt Librium but it proved ineffective.¹⁴ Despite the severity of Mr. Pratt's symptoms, and an assessment tool advising the nurse to contact a physician, the nurse failed to contact a physician.¹⁵ The nurse also failed to check Mr. Pratt's vitals or perform any additional assessments.¹⁶

Approximately eight hours later, a jail doctor examined Mr. Pratt and noticed a two-centimeter cut on his forehead and a pool of blood in his cell.¹⁷ The doctor, aware of Mr. Pratt's earlier symptoms from his medical records, observed Mr. Pratt's disoriented state, but only gave him Valium without sending him to the hospital for suitable care.¹⁸ Another nurse encountered Mr. Pratt later that afternoon and noted that he needed assistance with daily living activities.¹⁹ Yet again, the staff did not escalate Mr. Pratt's level or place of care.²⁰

The next morning, a licensed professional counselor (LPC) conducted a mental health evaluation of Mr. Pratt.²¹ The LPC observed Mr. Pratt struggling to answer questions and determined the cut on his forehead was unintentional.²² Nevertheless, the LPC declined to seek further care for Mr. Pratt.²³

That afternoon, the doctor assessed Mr. Pratt again and noted that he was underneath the sink in his cell with a cut on his forehead.²⁴ Another nurse observed Mr. Pratt around midnight, but he would not get up, so she did not check his vitals.²⁵ Just before 1 a.m., a detention officer found Mr. Pratt lying motionless on his bed and called for a nurse. Mr. Pratt had suffered a cardiac arrest and was then finally sent to the hospital.²⁶ The hospital later discharged Mr. Pratt with a seizure disorder and other ailments that left him permanently disabled.²⁷

Mr. Pratt's guardian, Faye Strain (Ms. Strain) brought a § 1983 action against county officials, jail medical staff, and municipalities for their deliberate indifference to Mr. Pratt's serious medical needs.²⁸ Ms. Strain argued that deliberate indifference to a pretrial detainee's serious medical needs includes only an objective component and that there were sufficient facts to support her claim that the defendants were deliberately indifferent.²⁹ The defendants argued that deliberate indifference to a pretrial detainee's serious medical needs includes both an objective and a subjective component, and that Ms. Strain met neither component.³⁰ The District Court agreed with the defendants, granting their motions to dismiss.³¹ Ms. Strain appealed to the Tenth Circuit.³²

B. Holding

The Tenth Circuit affirmed the lower court's ruling.³³ Judge Carson, writing for the court, held that Ms. Strain failed to allege sufficient facts to support her deliberate indifference claims.³⁴ The court reasoned that *Kingsley v. Hendrickson* applied solely to excessive force claims, not on the status of the detainee, and thus should not be extended to deliberate indifference claims brought by pretrial detainees.³⁵ Next, they asserted that deliberate indifference infers a subjective component.³⁶ They concluded that the defendants were not deliberately indifferent and held that Ms. Strain's complaint failed to show that the defendants were subjectively aware of Mr. Pratt's serious medical needs and acted objectively unreasonable under the circumstances.³⁷ They further held that the municipality defendant could not be held liable because Ms. Strain did not allege a systematic failure of multiple officials equating to a constitutional violation.³⁸

C. Roadmap

The Tenth Circuit incorrectly granted the defendants' motions to dismiss because Ms. Strain alleged sufficient facts to support her deliberate indifference claims. This comment argues that the Supreme Court's objective standard should be logically applied to pretrial detainee deliberate

indifference claims for two reasons. First, *Kingsley* uniquely applies to pretrial detainees. Second, the defendants were both objectively and subjectively aware of the substantial risk of harm regarding Mr. Pratt's serious medical needs. Next, this comment argues that the defendants' inaction was unreasonable under the circumstances and amounted to more than mere negligence. Finally, this comment argues that the facts alleged indicate a custom or policy of the municipality defendant sufficient to hold them liable for deliberate indifference to Mr. Pratt's serious medical needs.

II. Analysis

A. *The Kingsley standard applies to pretrial detainee deliberate indifference claims.*

A holding can be extended to an issue distinct from the one it addresses if doing so would be logical.³⁹ Broad wording indicates that a holding can be logically extended beyond the exact issue it addresses.⁴⁰

The Tenth Circuit declines to extend the objective standard used for pretrial detainee excessive force claims in *Kingsley* to pretrial detainee deliberate indifference claims.⁴¹ The court argues that it is inappropriate to consider the *Kingsley* decision dispositive because it specifically addressed pretrial detainee excessive force claims, which are not the issue precisely presented in the case.⁴² By doing so, the court erroneously focuses solely on the differences between the issues in each case instead of their similarities. The court ignores the principle that a holding can be extended so long as doing so is logical.

The extension is logical because the broad wording of *Kingsley* indicates that it may be extended beyond what it addresses. The *Kingsley* rule rested on the detainee's status and not excessive force,⁴³ as the court suggests.⁴⁴ Evidence of this is the remaining subjective standard for convicted prisoners' excessive force claims.⁴⁵ Further, the term "pretrial detainee" is used

significantly more than “excessive force,” in the opinion,⁴⁶ and when “excessive force” is used, it is almost exclusively in conjunction with “pretrial detainee.”⁴⁷ Thus, the *Kingsley* objective standard should logically apply to pretrial detainee deliberate indifference claims.

B. The defendants were objectively and subjectively aware of Mr. Pratt’s medical needs.

Following the *Kingsley* objective standard, a plaintiff need only show that a defendant-official knew, or should have known, that the pretrial detainee’s medical condition posed a serious risk to health or safety.⁴⁸ A defendant *should know* something if it is their responsibility to address it.⁴⁹ The subjective standard requires the defendant to have (i) *actually known* that the plaintiff’s medical condition posed a serious risk, or (ii) that the risk was obvious.⁵⁰

Objectively, as his medical and mental caretakers, every defendant *should have known* of Mr. Pratt’s serious medical needs because it was their responsibility to address them.⁵¹ However, even under the more stringent subjective standard, the facts alleged indicate that the defendants *actually knew* of Mr. Pratt’s serious medical needs, and that the needs were obvious. Mr. Pratt told the defendants about his habitual drinking from the time he entered the facility, and they witnessed his conditions worsen.⁵² They were advised to seek additional help by a medical device and witnessed him curled up in a pool of blood with a cut on his head.⁵³ They witnessed him disoriented and struggling to answer questions.⁵⁴ They were even advised that he needed alternative living arrangements and saw him lying motionless in bed.⁵⁵ These facts indicate that the defendants were aware of the serious risk to Mr. Pratt’s health; even if they were not, the risk was obvious.

C. A reasonable jail official, or medical staffer would have done substantially more to treat Mr. Pratt’s serious medical needs.

If a defendant knows or should know that a plaintiff’s medical condition poses a serious risk to health or safety, and they disregard it, they will be held liable for deliberate indifference.⁵⁶ The

plaintiff must prove more than negligence but substantially less than subjective intent.⁵⁷ A person need only “consciously disregard”⁵⁸ a substantial risk by acting intentionally (on their own accord) and not by accident.⁵⁹ Conduct that is more than mere negligence includes grossly inadequate care, administering easier but less effective treatment, administering treatment that is so cursory as to amount to no medical care at all, and delaying necessary medical treatment.⁶⁰

Here, the facts do not indicate that the actions or inaction taken by the defendants were by accident.⁶¹ Thus, a ruling in the light most favorable to the plaintiffs would result in a finding that the defendants acted intentionally (on their own accord).

The alleged conduct signifies a reckless disregard more than mere negligence because it is an easier but less effective treatment, and so cursory as to amount to no medical care at all. After witnessing all the facts alleged, the defendants are said to have done nothing more than assess Mr. Pratt’s needs and give him sedatives.⁶² The Tenth Circuit argues that Ms. Strain’s complaint goes toward the efficacy of treatment and not whether treatment was administered at all.⁶³ The court’s understanding is faulty because though treatment that proves ineffective is not grounds for a deliberate indifference claim, assessing one’s needs and prescribing sedatives cannot be deemed to be treatment.

Assessing needs only helps recognize and track medical needs but does nothing to treat them. Sedatives simply put a blanket over the actual need by easing side effects without treating the issue causing the effects – like giving Ibuprofen to someone with a gunshot wound. It was a lot easier for jail officials to simply feed Mr. Pratt sedatives instead of actually treating his serious medical needs. Furthermore, by delaying treatment until Mr. Pratt went into cardiac arrest, the jail officials heightened the likelihood of his harm. A reasonable jail official or medical staffer would have done

substantially more to treat Mr. Pratt's serious medical needs, and therefore the defendants' alleged inaction amounted to deliberate indifference.

D. The facts alleged indicate the municipality defendant has a custom or policy of deliberate indifference toward pretrial detainees' serious medical needs.

A municipality defendant can be held liable when shown to have a custom or policy which leads to a plaintiff's injuries.⁶⁴ In such a case, "the combined actions of multiple officials can amount to a constitutional violation even if no one individual's actions were sufficient."⁶⁵ A municipality can demonstrate a custom or policy of providing delayed emergency medical treatment to inmates by just their actions or inactions as opposed to a written policy or rule.⁶⁶ "Systemic deficiencies"⁶⁷ and "repeated examples of delayed or denied medical care"⁶⁸ can provide the basis for a finding of deliberate indifference.

Here, the facts alleged demonstrate repeated examples of delayed or denied medical care by individuals within the municipality. On several occasions, the facts alleged reveal that employees of the municipality assessed Mr. Pratt's serious medical needs and failed to act, resulting in permanent disability.⁶⁹ The repetitiveness of the issue indicates a custom or policy of delayed or denied medical care. Thus, Ms. Strain stated a valid claim based on the facts alleged, and the district court erred in granting the municipality defendant's motion to dismiss.

E. Conclusion

The facts alleged indicate that Ms. Strain's deliberate indifference claims were sufficient to survive a motion to dismiss. First, *Kingsley* uniquely applied to pretrial detainees, and the Supreme Court's objective standard can be logically applied to pretrial detainee deliberate indifference claims. Secondly, the defendants were both objectively and subjectively aware of the substantial risk of harm regarding Mr. Pratt's serious medical needs. Third, the defendants' inaction was

unreasonable under the circumstances and amounted to more than mere negligence. Finally, the facts alleged indicate a custom or policy of the municipality defendant sufficient to hold them liable for deliberate indifference. Thus, the court erred in their judgement.

¹ *Strain v. Regalado*, 977 F.3d 984, 987 (10th Cir. 2020).

² Some Circuits believe that pretrial detainee deliberate indifference claims warrant an objective standard, while others believe the standard should be subjective. *See, e.g., Darnell v. Pineiro*, 849 F.3d 17, 29 (2d Cir. 2017); *Castro v. County of Los Angeles*, 833 F.3d 1060, 1069 (9th Cir. 2016). *But see, e.g., Alderson v. Concordia Parish Correctional Facility*, 848 F.3d 415, 419 (5th Cir. 2017); *Whiting v. Marathon County Sheriff's Dept.*, 382 F.3d 700, 703 (7th Cir. 2004); *Whitney v. City of St. Louis, Missouri*, 887 F.3d 857, 860 (8th Cir. 2018); *Strain*, 977 F.3d at 987; *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999).

³ *See generally Kingsley v. Hendrickson*, 576 U.S. 389 (2015) (initiating an objective standard for excessive force claims brought by pretrial detainees).

⁴ *See id.* at 389–90.

⁵ *See id.*

⁶ *See id.*

⁷ *See id.*

⁸ The Second and Ninth Circuits have held that the *Kingsley* objective standard should be applied to pretrial detainee deliberate indifference claims. *See, e.g., Darnell*, 849 F.3d at 29; *Castro*, 833 F.3d at 1069.

⁹ The Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits have held that the *Kingsley* objective standard does not apply to pretrial detainee deliberate indifference claims. *See, e.g., Alderson*, 848 F.3d at 419; *Whiting*, 382 F.3d at 703; *Whitney*, 887 F.3d at 860; *Strain*, 977 F.3d at 987; *McElligott*, 182 F.3d at 1255.

¹⁰ *See Strain*, 977 F.3d at 987.

¹¹ *See id.*

¹² *See id.*

¹³ *See id.* at 988.

¹⁴ *See id.*

¹⁵ *See id.*

¹⁶ *See id.*

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See id.*

²¹ *See id.*

²² *See id.*

²³ *See id.*

²⁴ *See id.*

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See id.*

²⁸ *See id.*

²⁹ *See id.* at 989.

³⁰ *See id.*

³¹ *See id.* at 988.

³² *See id.*

³³ *See id.* at 987.

³⁴ *See id.* at 989.

³⁵ *See id.* at 991.

³⁶ *See id.*

³⁷ *See id.* at 995–96.

³⁸ *See id.* at 997.

³⁹ *See Gordon v. County of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018).

⁴⁰ *See Castro*, 833 F.3d at 1070.

⁴¹ *See Strain*, 977 F.3d at 991.

⁴² *See id.*

⁴³ *See generally Kingsley*, 576 U.S. 389 (initiating an objective standard solely for excessive force claims brought by pretrial detainees).

⁴⁴ *See generally Strain*, 977 F.3d 984 (holding *Kingsley* was unique to excessive force claims).

⁴⁵ *See Kingsley*, 576 U.S. at 400.

⁴⁶ *See generally Kingsley*, 576 U.S. 389.

⁴⁷ *See generally Kingsley*, 576 U.S. 389.

⁴⁸ *See Darnell*, 849 F.3d at 35.

⁴⁹ *See Miranda v. County of Lake*, 900 F.3d 335, 343 (7th Cir. 2018) (holding that jail officials should not have known about pretrial detainee's medical condition because it was primarily the responsibility of medical professionals whom they could reasonably rely upon).

⁵⁰ *See Castro*, 833 F.3d at 1068, 1072.

⁵¹ *See Strain*, 977 F.3d at 987.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *See Darnell*, 849 F.3d at 27, 29.

⁵⁷ *See Castro*, 833 F.3d at 1071.

⁵⁸ *Id.* at 1085.

⁵⁹ *See id.*

⁶⁰ *See Davies v. Israel*, 342 F.Supp.3d 1302, 1308 (S.D. Fla., 2018).

⁶¹ *See Strain*, 977 F.3d at 987.

⁶² *See id.*

⁶³ *See id.* at 995.

⁶⁴ *See Castro*, 833 F.3d at 1075.

⁶⁵ *Strain*, 977 F.3d at 997.

⁶⁶ *See Castro*, 833 F.3d at 1075.

⁶⁷ *Davies*, 342 F.Supp.3d at 1309.

⁶⁸ *Id.*

⁶⁹ *See Strain*, 977 F.3d at 987.

Applicant Details

First Name	Maximiliano
Last Name	Elizondo
Citizenship Status	U. S. Citizen
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Contact Phone Number	3618151984

Applicant Education

BA/BS From	Baylor University
Date of BA/BS	May 2021
JD/LLB From	St. Mary's University School of Law
	https://law.stmarytx.edu/
Date of JD/LLB	May 18, 2021
Class Rank	10%
Law Review/Journal	Yes
Journal(s)	St. Mary's Law Journal
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Maximiliano Elizondo

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June 10, 2023

The Honorable United States District Judge Leslie Abrams Gardner
C.B. King United States Courthouse
201 West Broad Avenue
Albany, GA 31701-2566

Dear Judge Gardner:

I write to submit my application for a 2024–25 clerkship in your chambers. I am a 2L at St. Mary's University School of Law, where I am the Editor in Chief of the *St. Mary's Law Journal*. I earned my B.A. from Baylor University.

In law school, I have maximized my opportunities to research, write, and learn about different areas of the law. On the *Law Journal*, I edited four articles. One required researching international law. For this assignment, I examined Nigerian and Kenyan constitutional law and researched how these legal systems addressed the rights of internally displaced persons. I also drafted a journal comment on the ethical responsibilities of personal injury attorneys. The comment discusses how lower fee arrangements may reduce the effort a personal injury lawyer expends on a case and the ethical implications of such conduct. Further, as a research assistant, I edited and cite-checked multiple chapters of *Federal Evidence Tactics*. I have also taken an advanced legal seminar, in which I drafted a detention order, a suppression order, and a proposed judicial opinion for a prisoner civil rights case. Combined, these research and writing opportunities have challenged me to think critically about different legal issues. I believe they have adequately prepared me to be a law clerk.

I also believe my work ethic and ability to multitask will make me a value-add to your chambers. I am constantly working on multiple projects, and I consistently complete them with efficiency. As Editor in Chief of the *Law Journal*, I manage the production of four different issues, oversee several large-scale events, and ensure our members comply with our bylaws. I recognize the importance of being organized, which is essential to meeting deadlines and maintaining my grades. Accordingly, I believe my sense of professional integrity will make me an effective and reliable law clerk.

Enclosed are my resume, list of references, writing sample, and transcript. If you need additional information, please reach me by phone at (361) 815-1984 or email at melizondo17@mail.stmarytx.edu. Thank you for your time and consideration.

Respectfully,
Maximiliano Elizondo

Maximiliano Elizondo

1915 Broadway Apt. 337, San Antonio, Texas, 78215
melizondo17@mail.stmarytx.edu | (361) 815-1984

EDUCATION

St. Mary's University School of Law

San Antonio, TX
2021 – Present

J.D. Candidate, expected 2024

Rank: Top 5.5% (13/233); GPA: 3.67/4.0

Journal: Editor in Chief, *St. Mary's Law Journal* (Vol. 55)

Honors: Dean's List (top 10%): Fall 2021 & 2022

Faculty Award (highest exam score): Wills, Estates, and Trusts
Staff Editor Excellence Award

Publication: Comment, *The Impact the Monetary Value of a Case Has on Effort and Productivity Within the Field of Personal Injury*, 14 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS — (forthcoming 2024)

Activities: St. Mary's Criminal Law Association
Hispanic Law Students Association

Baylor University, Waco, Texas

B.A., Political Science; Minor: History

Waco, TX
2017 – 2021

Study Abroad: Studied French in Paris, France

EXPERIENCE

United States District for the Southern District of Texas

San Antonio, TX
Summer 2023

Incoming Intern for the Hon. U.S. Magistrate Judge Julie Hampton

United States District Court for the Western District of Texas

San Antonio, TX
Summer 2023

Incoming Intern for the Hon. U.S. District Judge Jason Pulliam

St. Mary's School of Law – Associate Dean Ramona L. Lampley

San Antonio, TX
Winter 2022 – Present

Research Assistant

- Researched reports published by the Federal Rules of Evidence Advisory Committee.
- Assisted with drafting and revising chapters of Dean Lampley's book, *Federal Evidence Tactics*.
- Reviewed case law and edited articles discussing car privacy and vehicle financing for military members.

Gowan Elizondo LLP

Corpus Christi, TX
Summer 2022

Law Office Intern

- Researched case law on the liability of ambulance operators and negligent patient transfers.
- Formulated motions, demand letters, and petitions.
- Drafted a response to a motion for summary judgment, which argued a claim for *respondeat superior* liability should proceed to trial.

Law Office of Scott M. Ellison – Scott Ellison

Corpus Christi, TX
Summer 2020

Law Office Intern

- Observed criminal proceedings and discussed legal theory with supervising attorney.

INTERESTS & VOLUNTEER ACTIVITIES

- Weightlifting, reading western and horror novels, and painting miniature figures.
- SNIPSA Volunteer – Assist in puppy bathing, dog walking, and instrument cleaning. Volunteer approximately 3-6 hours per week.


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Search
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One Camino Santa Maria
San Antonio, Texas 78228S00713040 Maximiliano D. Elizondo
Jun 09, 2023 03:57 pm

Academic Transcript

This is not an official transcript. Courses which are in progress may also be included on this transcript.

"R" column denotes repeated course at St.Mary's University:

E = course was excluded from GPA calculation (lower grade)

I = course was included in GPA calculation (higher grade)

[Institution Credit](#) [Transcript Totals](#) [Courses in Progress](#)

Transcript Data

STUDENT INFORMATION

Name : Maximiliano D. Elizondo

Curriculum Information

Primary Program

Program: Juris Doctorate

Major and Department: Law, Law Department

***Transcript type:Gateway Transcript is NOT Official ***

DEGREE AWARDED

Sought: Juris Doctorate

Degree Date:

Curriculum Information

Program: Juris Doctorate

Major: Law

INSTITUTION CREDIT [-Top-](#)

Term: Fall 2021

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LW	6335	LW	LCAP I	B	3.000	9.00	
LW	6477	LW	Federal Civil Procedure I	A-	4.000	14.68	
LW	6478	LW	Torts	A	4.000	16.00	
LW	6490	LW	Contracts	A	4.000	16.00	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	55.68	3.71
Cumulative:	15.000	15.000	15.000	15.000	55.68	3.71

Unofficial Transcript

Term: Spring 2022

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LW	6336	LW	LCAP II	B-	3.000	8.01	
LW	6341	LW	Criminal Law	B	3.000	9.00	
LW	6440	LW	Constitutional Law	A	4.000	16.00	
LW	6480	LW	Property	A-	4.000	14.68	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	14.000	47.69	3.41
Cumulative:	29.000	29.000	29.000	29.000	103.37	3.56

Unofficial Transcript

Term: Fall 2022

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LW	6705	LW	Jurisprudence:Gender & The Law	B	3.000	9.00	
LW	7230	LW	Law Journal - Staff Writer	P	2.000	0.00	
LW	7308	LW	Voting Law	A-	3.000	11.01	
LW	7427	LW	Wills, Estates, and Trusts	A	4.000	16.00	
LW	8318	LW	Mortgages & Real Estate Financ	A	3.000	12.00	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	13.000	48.01	3.69
Cumulative:	44.000	44.000	44.000	42.000	151.38	3.60

Unofficial Transcript

Term: Spring 2023

Academic Standing: Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LW	6200	LW	Adv Legal Wrting Federal Clerks	B+	2.000	6.66	
LW	6434	LW	Evidence	A	4.000	16.00	
LW	7310	LW	Business Associations	A	3.000	12.00	
LW	7505	LW	Law Journal Staff Writer	P	1.000	0.00	
LW	7629	LW	Animal Law	A-	2.000	7.34	
LW	8745	LW	International Human Rights	A	3.000	12.00	

Term Totals (Law)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	14.000	54.00	3.86
Cumulative:	59.000	59.000	59.000	56.000	205.38	3.67

Unofficial Transcript

TRANSCRIPT TOTALS (LAW) [-Top-](#)

Level Comments:	Other Colleges Attended Graduated BA May 2021 Baylor University - Waco, Texas					
	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	59.000	59.000	59.000	56.000	205.38	3.67
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	59.000	59.000	59.000	56.000	205.38	3.67

Unofficial Transcript

COURSES IN PROGRESS [-Top-](#)

Term: Fall 2023

Subject	Course	Level	Title	Credit Hours
LW	6333	LW	Professional Responsibility	3.000
LW	7331	LW	Family Law	3.000
LW	7375	LW	Constitution Criminal Procedure	3.000
LW	7694	LW	Sales	2.000
LW	8391	LW	Estate Planning	3.000
LW	8607	LW	Law Journal Editorial Board	2.000

Unofficial Transcript

[[Financial Aid Eligibility Menu](#)]

St. Mary's University is an equal education opportunity institution. The University's admission standards and practices are free from discrimination on the basis of age, sex, race, creed, color, disability, ethnicity or national origin. As required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, information regarding crime statistics, campus safety, crime prevention and victim's assistance is available on the St. Mary's University Web site at <http://www.stmarys.edu/policy>. A paper copy of the report is available by request. Additionally, information regarding graduation and retention rates is available at <http://www.stmarytx.edu> All material sent to St. Mary's University becomes the property of the University and will not be released. Final admission will be granted only after a final transcript of high school and/or college work is received.



To Whom it May Concern:

My name is John D. Schroeder. I am a partner at Gowan Elizondo LLP, a personal injury law firm in Corpus Christi, Texas. Max Elizondo was one of my law clerks for the 2022 Summer, and I unequivocally give him my recommendation for a clerkship.

I had the opportunity to work directly with Max on a number of complex and diverse legal matters. One of particular remembrance was a complex, commercial wrongful death dram shop case with several intricate summary judgment arguments prior to a jury trial that Summer. Max dug deeply to locate case research addressing the nuances of vital arguments for our clients. I am proud to say that Max was part of the trial team that helped us obtain a multi-seven figure jury verdict that Summer for our clients' families.

Max is also an eager individual. Max was always ready for the next task to be assigned and wanted more! It was encouraging to know that once a legal research task was assigned to him, no further reminders or supervision was required. Max's finished product was always complete, with substantial thought put into whatever he was doing.

Additionally, Max's writing skills are equally impressive. His memorandums and emails to the partners were concise and consistently provided relevant case/statutory law. No matter the day or time, I found that Max promptly replied to correspondence and started a required task immediately, whether it was afterhours or on the weekend. In my opinion, Max will make an outstanding law clerk.

It is without hesitation that I recommend him for a federal clerkship. Please feel free to contact me directly should you want to discuss Max's qualifications or performance in further detail.

Sincerely,
John D. Schroeder
John D. Schroeder

CORPUS CHRISTI ♦ LAREDO ♦ BOERNE ♦ HOUSTON
55 N. Carancahua Street, Suite 1400 • Corpus Christi, Texas 78401 • Telephone 361.651.1000
Facsimile 361.651.1001 • Toll Free 866.833.0088 • www.gelawfirm.com

June 11, 2023

Dear Judge:

My name is Christopher A. Garza and I am a partner with Gowan Elizondo, LLP in Corpus Christi, Texas. I am writing to strongly recommend Maximiliano Elizondo for a clerkship with your court.

Our firm had the opportunity and pleasure to have Maximiliano as our intern in the summer of 2022. He was an outstanding and valuable asset to our firm during his time with us. Throughout the summer he consistently added value to the case projects assigned to him with on point research, excellent writing skills, and sharp arguments.

When I was in law school I had the opportunity to be a summer clerk for Judge Janis Graham Jack of the United States District Court for the Southern District of Texas. It was a wonderful experience and I know Maximiliano will be a great fit and valuable addition to any Court staff.

In short, I highly recommend Maximiliano Elizondo for a clerkship position without reservation. If you need any further assistance or any additional detail as to Maximiliano's work ethic or qualifications please reach out any time.

Sincerely,

Christopher A. Garza, Partner

Gowan Elizondo, LLP

361-537-8491

cgarza@gelawfirm.com

Chris Garza - cgarza@gelawfirm.com - (361) 537-8491

June 11, 2023

The Honorable Leslie Gardner
C.B. King United States Courthouse
201 West Broad Avenue, 3Rd Floor
Albany, GA 31701-2566

Dear Judge Gardner:

Max Elizondo has my highest recommendation to work as a clerk in your chambers. Put simply, Max is probably the most pleasant and inspiring research assistant I have ever had. As his CV and cover letter describe, he excels in all areas. He will definitely serve you well in research and writing. But what his CV cannot tell you is how positive and cheerful Max is. He responds to every work request with a cheerful enthusiasm. He delves into research projects with an intellectual curiosity and delight at finding something new in the law that is refreshing for this mid-career law professor. His emails bring a smile to my face, and his attitude reminds me of what it was like to find so many aspects of legal research compelling, interesting, and motivating. He will make your life better just by showing up to work, and even more so when he delivers work product to you, because it will be excellent.

Max is, of course, one of our best and brightest. He will be Editor-in-Chief of the *St. Mary's Law Journal*, one of the highest leadership roles to which a student may aspire. Max is in the top 6% of his class and was the winner of the *Law Journal's* "Staff Writer of the Year" award (a fact I strongly suspect was based on his incredible work ethic and joyful approach to legal research). He has researched and drafted text for my treatise, *Federal Evidence Tactics*; he has edited numerous articles for me in my work on the *Consumer Finance Law Quarterly Report*; and he continues to tackle any number of idiosyncratic research requests I might throw at him. He's professional, happy, and responsive. More importantly, I trust him. He always meets deadlines before they are due, and he asks the right questions to get the job done. He is also an excellent writer and will soon have his own piece, *The Impact the Monetary Value of a Case has on Effort and Productivity Within the Field of Personal Injury*, published in the *St. Mary's Law Journal*.

Max has also found that one of the greatest satisfactions in life is giving of oneself to help those in need. He has volunteered over 50 hours at SNIPSA, a local animal shelter, and is one of the kindest law students with whom I've ever worked.

I know you receive hundreds, perhaps thousands, of qualified applications. I also know you will have students apply who have attended very highly ranked law schools or who have outstanding degrees or prior experience. But there is nothing that matters more in a clerk (as a former clerk) than a strong work ethic, a positive attitude, and a curious mind. You will get these in Max, and I'm positive you will think hiring him was one of the best decisions you could have made.

I hope you will give Max the opportunity to interview with you, and I hope you will take up my invitation to talk in more detail about his skills. My office number is (210) 436-3752. I would be happy to discuss with you more specifics about my experience working with this bright and talented student.

Sincerely,

Ramona Lampley
Associate Dean for Research and Faculty Development
Professor of Law
St. Mary's University School of Law
Editor, *Conference on Consumer Finance Law Quarterly Report*

Ramona Lampley - rlampley@stmarytx.edu - Lampley1

Maximiliano Elizondo

1915 Broadway Apt. 337, San Antonio, TX 78215
melizondo17@mail.stmarytx.edu | (361) 815-1984

WRITING SAMPLE

This 11-page writing sample is a proposed judicial opinion I drafted for an advanced legal writing seminar. The opinion addresses whether a border patrol agent had reasonable suspicion to conduct a roving patrol stop.

My instructor provided the class with an outline with pre-written headings. Additionally, another student conducted a required peer review of the draft and a teaching assistant provided feedback on concision and other stylistic matters. My initial draft and revisions are entirely my own writing.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF TEXAS
OAK TREE DIVISION

UNITED STATES OF AMERICA	§	
	§	
	§	
VS.	§	CRIMINAL ACTION NO. X:XX-XX-XXXX
	§	
	§	
ALEXANDER DAVID SMITH	§	

ORDER

Defendant has filed a motion to suppress, and the Government has filed a response (Dkt. Nos. 28, 32). Having reviewed the arguments and applicable authority, the Court finds the motion to suppress (Dkt. No. 28) is **DENIED**.

I. BACKGROUND

A. Procedural History

Defendant was indicted for both conspiring to transport and actually transporting undocumented aliens. *See* 8 U.S.C. § 1324(a)(1)(A)(ii); § 1324(v)(I); (Dkt. No. 19). The Defendant filed a Motion to Suppress arguing the stop leading to his arrest was unconstitutional (Dkt. No. 28 at 7). Defendant argues the arresting agent obtained the evidence during an illegal seizure and must be suppressed under the “fruit of the poisonous tree doctrine” (*id.*). The Government responded (Dkt. No. 32).

B. Factual Allegations

The Court held a suppression hearing, which established the following: On September 11, 2022, Border Patrol Agent Christopher Peterson patrolled a section of I-35 (*id.* at 11). During this patrol, a Department of Defense (DOD) stationed at mile

marker 27 spotted Defendant's vehicle (*id.* at 14). The DOD station notified Agent Peterson the vehicle was traveling north on the west access road (*id.*). Once the Defendant passed mile marker 31, Agent Peterson began following him (*id.* at 17). As Agent Peterson trailed Defendant, he made the following observations:

1. The Defendant drove a very clean suburban registered to a rental company in Oklahoma (*id.* at 17–18);
2. The Defendant seemed very tense; two hands on the wheel and arms locked out (*id.* at 17);
3. Local drivers typically waved when they passed officers (*id.* at 24). Defendant did not wave (*id.*);
4. Once the Defendant noticed Agent Peterson behind him, the Defendant slowed down to 20 miles below the speed limit (*id.* at 18);
5. The Defendant accelerated and created a significant distance between himself and the agent (*id.*). In order to reach the Defendant, Agent Peterson had to reach speeds of 105 miles per hour (*id.* at 20); and
6. The Defendant wove in and out of traffic (*id.*).

After Agent Peterson concluded the Defendant behaved suspiciously, he conducted a roving patrol stop (*id.* at 22).

II. LEGAL STANDARD

The Fourth Amendment governs whether a seizure is constitutional. *Terry v. Ohio*, 392 U.S. 1, 16 (1968). A seizure is constitutional under the Fourth Amendment if it is “reasonable.” *United States v. Brignoni-Ponce* 422 U.S. 873, 878 (1975). In

Brignoni-Ponce, the Supreme Court concluded “officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts” to warrant reasonable suspicion of illegal activity. *Id.* at 884. The reasonable suspicion standard “requires more than merely an unparticularized hunch, but considerably less than proof of wrongdoing by a preponderance of the evidence.” *United States v. Garza*, 727 F.3d 436, 440 (5th Cir. 2013). *Brignoni-Ponce* enumerated the following eight factors to determine whether reasonable suspicion exists:

1. Proximity to the border;
2. Characteristics of the area;
3. Driver’s behavior;
4. Usual traffic patterns;
5. Aspects of the vehicle;
6. Recent illegal activity; and
7. The arresting agent’s previous experience; and
8. The appearance of passengers. *Brignoni-Ponce* 422 U.S. at 885–86.

Looking to the totality of the circumstances is essential for a reasonable suspicion determination. *Garza*, 727 F.3d at 440. Therefore, not every factor “need weigh in favor of reasonable suspicion” in order to meet the standard. *United States v. Zapata-Ibarra*, 212 F.3d 877, 884 (5th Cir. 2000). When an officer acts without a warrant, the Government has the burden of proving whether reasonable suspicion exists. *United States v. Waldrop*, 404 F.3d 365, 368 (5th Cir. 2005).

III. DISCUSSION

The Court finds Agent Peterson had a reasonable suspicion to conduct the roving patrol stop. Four of the eight *Brignoni-Ponce* factors weigh in favor of reasonable suspicion: proximity to the border, the driver's behavior, characteristics of the area, and aspects of the vehicle. Two factors weigh against a finding of reasonable suspicion: usual traffic patterns and the arresting agent's previous experience. The final two factors – recent illegal activity and appearance of the passengers – weigh neutrally because they were not taken into the agent's consideration in conducting the stop. The factors when viewed in their totality satisfy the reasonable suspicions standard.

A. Proximity to the Border

Proximity to the border is “a paramount factor in determining reasonable suspicion.” *Zapata-Ibarra*, 212 F.3d at 881. This vital element asks whether the agent had “reason to believe that the vehicle had come from the border.” *United States v. Lamas*, 608 F.2d 547, 549 (5th Cir. 1979). While there is no bright-line rule for this factor, generally “fifty miles from the border is . . . too far from the border to support an inference that it originated its journey there.” *United States v. Jones*, 149 F.3d 364, 368 (5th Cir. 1998). Therefore, anything within fifty miles necessarily “implicates” the proximity factor. *Garza*, 727 F.3d at 441; see *United States v. Jacquinot*, 258 F.3d 423, 428 (stating the proximity element has been met if the agent observed the defendant's car within 50 miles of the border); see also *United States v. Villalobos*, 161 F.3d 285, 289 (concluding this factor has been satisfied when the vehicle is only thirty-six miles from the border). The stop here occurred approximately

thirty miles from United States-Mexico border (Dkt. No. 40 at 21). Therefore, this factor weighs in favor of reasonable suspicion.

B. Characteristics of the Area

In determining whether the “characteristics of the area” factor has been met, the Court looks to whether the road is known as a smuggling route. *Garza*, 727 F.3d at 441; see *United States v. Nichols*, 142 F.3d 857, 870 (5th Cir. 1998) (“It is well established that a road’s reputation as a smuggling route adds to the reasonableness of the agents’ suspicion.”).

Agent Peterson testified that he had previous knowledge of smugglers using the west access road to circumvent the checkpoint (Dkt. No. 32 at 3). The Government argues the “characteristics of the area” factor weighs in favor of reasonable suspicion (*id.*). The Defendant states a route’s reputation for smuggling alone is insufficient to establish reasonable suspicion (Dkt. No. 28 at 6). As the Court has already indicated though, there are multiple other factors weighing in favor of the Government. It would be inappropriate to view each factor within a vacuum because they must be viewed in the totality of the circumstances. *Garza*, 727 F.3d at 440; see also *United States v. Chavez-Chavez*, 205 F.3d 145, 148 (stating reputation is established when viewed in the light of other factors).

The Defendant cites multiple cases indicating a road’s reputation for illegal activity is insufficient to justify a stop (Dkt. No. 28 at 6). But in all three of those cases, the Defendants were stopped more than 70 miles from the border. See *Chavez-Chavez*, 205 F.3d 145 at 148 (“The stop occurred 150 to 160 miles north of the border

. . .); *United States v. Diaz*, 977 F.2d 163, 165 (5th Cir. 2000); *see also Olivarez-Pacheco*, 633 F.3d at 403 (stating the stop occurred more than 200 miles from the border). As stated in the previous section, the proximity factor has been satisfied. Therefore, the roads reputation as an alien smuggling route satisfies the “characteristics of the area” factor and weighs it in favor of reasonable suspicion.

C. Driver’s Behavior

The third factor analyzed in the Court’s inquiry is driver behavior. *Brignoni-Ponce*, 422 U.S. at 885. The driver’s behavior may raise a reasonable suspicion when his driving is erratic or when he attempts to evade the agent. *Id.* Agent Peterson indicated the following behavior was suspicious: (1) Defendant tapped on his brakes and drove 20 miles below the speed limit (Dkt. No. 40 at 18); (2) Defendant rapidly sped up when a tractor trailer pulled in front of Agent Peterson (Dkt. No. 32 at 4). This required the agent to reach speeds of 105 miles per hour to catch up (*id.*); and (3) Defendant wove in and out of traffic (Dkt. No. 40 at 21).

The Court finds the Defendant’s driving behavior weighs in favor of reasonable suspicion. First, this Circuit has concluded deceleration is often innocent, but “such behavior may be suspicious if the driver was not speeding when first observed.” *Jacquinet*, 258 F.3d at 429; *see Villalobos*, 161 F.3d at 291 (“We have held that noticeable deceleration in the presence of a patrol car can contribute to a reasonable suspicion, even though drivers often slow when they see law enforcement personnel.”). Here, the agent gave no testimony indicating the Defendant was speeding prior to decelerating. Therefore, deceleration aids in a finding of reasonable

suspicion. Second, obvious attempts at evading officers support a reasonable suspicion. *Brignoni-Ponce*, 422 U.S. at 885. As stated above, Defendant reached high speeds the moment a large tractor-trailer blocked Agent Peterson from following. This behavior can reasonably be interpreted as an attempt at evasion. Third, Agent could see Defendant weaving in and out of traffic (Dkt. No. 40 at 21). This type of behavior is erratic, which contributes to a finding of reasonable suspicion. *See United States v. Medina*, 295 Fed.Appx. 702, 707 (5th Cir. 2008) (stating defendant's speeding assisted in concluding the "driver's behavior" factor).

The Court concludes the Defendant's driving behavior contributed to Agent Peterson's reasonable suspicion. Therefore, this factor weighs in favor of reasonable suspicion.

D. Usual Traffic Patterns

Courts typically find the "usual traffic patterns" factor weighs in favor of reasonable suspicion when the vehicle is traveling at a suspicious time of day. *See Jacquinot*, 258 F.3d at 429 (stating traveling early on a Sunday morning contributes to a finding of reasonable suspicion). This factor is often only implicated when the agent makes statements pointing to the time of day as a reason for his suspicion. *See United States v. Morales*, 191 F.3d 602, 605 (5th Cir. 1999) (stating the agent's knowledge about usual smuggler travel times contributed to a finding of reasonable suspicion).

Agent Peterson made no comments stating the time of day contributed to a raising of suspicion. Agent Peterson only testified to the time of the stop, 5:40 p.m.

(Dkt. No. 40 at 49). Further, the agent made no comments about when smugglers typically travel, and how such knowledge influenced his conclusion. Therefore, the Court concludes this factor weighs against reasonable suspicion.

E. Aspects of the Vehicle

An unfamiliar vehicle to the area can act as additional weight to establishing reasonable suspicion. *United States v. Inocencio*, 40 F.3d 716, 723 (5th Cir. 1994). Further, individual characteristics of a vehicle, including its cleanliness, can add to a reasonable suspicion. *United States v. Moreno-Chaparro*, 180 F.3d 629, 633 (5th Cir. 1998). Finally, a vehicle registered to a distant area has been found to raise reasonable suspicion where the driver is driving on an indirect road. *Zapata-Ibarra*, 212 F.3d at 884.

Defendant's vehicle was quite clean (Dkt. No. 40 at 17). Agent Peterson took special notice of this because vehicles driven in the area were typically dirty (*id.*). A vehicle's degree of cleanliness can add to a reasonable suspicion. *Moreno-Chaparro*, 180 F.3d at 633. While a clean vehicle may not establish this factor itself, "observation of an unfamiliar and atypical-looking oil field vehicle with no company logos" has been found to assist in a reasonable suspicion determination. *Inocencio*, 40 F.3d at 723. Here, Agent Peterson took special notice of Defendant's vehicle because the type was seldom seen. (Dkt. No. 40 at 12). Agent Peterson further took notice of the lack of company logo (*id.*). By taking notice of the vehicle's unusualness, Agent Peterson added an additional basis to his reasoning.

Finally, Agent Peterson noted the vehicle was registered in Oklahoma (Dkt. No. 40 at 19). The Fifth Circuit has previously held registration in another state or city can add to reasonable suspicion. *Jacquinet*, 258 F.3d at 426. In *United States v. Zapata-Ibarra*, the vehicle was registered in San Angelo, Texas. *Zapata-Ibarra*, 212 F.3d at 883. Instead of traveling on a direct road to San Angelo, defendant traveled on an indirect route. *Id.* at 884. The agent concluded the defendant attempted to use the road as a means of circumventing the checkpoint, and the court found this fairly raised reasonable suspicion. *Id.* Here, the west access road had a much lower speed limit. It would be reasonable for Agent Peterson to believe a vehicle registered in Oklahoma would be traveling using the fastest route. The west access route is objectively slower than using I-35. Therefore, it was reasonable for Agent Peterson to conclude a vehicle registered in Oklahoma using the west access road may have been doing so for suspicious reasons.

Agent Peterson's observations in this case do establish a reasonable suspicion. Therefore, this factor weighs in favor of reasonable suspicion.

F. Recent Illegal Activity

Agent Peterson made no comment regarding recent illegal activity. Therefore, this factor weighs neutrally. *See United States v. Freeman*, 914 F.3d 337, 343 (finding lack of recent information fails to establish this factor).

G. Arresting Agent's Previous Experience

This factor considers the agent's previous experience and success rate. The arresting agent "is entitled to assess the facts in light of his experience in detecting illegal entry and smuggling." *Brignoni-Ponce*, 422 U.S. at 885; *see United States v.*

Neufeld-Neufeld, 338 F.3d 374, 380 (5th Cir. 2003) (stating the court should look at the totality of the factors in the context of the agent's experience). The amount of time an agent serves is relevant but not dispositive to the question of experience. *Freeman*, 914 F.3d at 346.

In *United States v. Freeman*, the arresting agent had over eight years of experience at a border checkpoint. *Id.* The agent conducted many stops throughout his tenure. *Id.* But the stops prevented criminal behavior only ten percent of the time. *Id.* The Court concluded the agent's low success rate reflected a lack of experience and the stops added little weight to reasonable suspicion. *Id.*

Here, Agent Peterson stated he had served Border Patrol for approximately three years (Dkt. No. 40 at 10). During this time, Agent Peterson had stopped thirty vehicles (*id.* at 56). In those thirty stops, three to four resulted in arrest (*id.*). This gives Agent Peterson an approximately ten percent success rate (*id.*). Because Agent Peterson's success rate is low, his experience in detecting illegal activity is limited. *Freeman*, 914 F.3d at 346 (concluding the agent's low success rate inhibits a finding of reasonable suspicion). The Court appreciates Agent Peterson's dedicated service as a border patrol agent. Nonetheless, the Court finds Agent Peterson's experience in detecting illegal activity weighs against a finding of reasonable suspicion.

H. The Appearance of Passengers

The "appearance of the passengers" factor weighs neutrally. Agent Peterson made no observations regarding this factor. Therefore, Agent Peterson could not use this factor to help assist his reasoning for suspicion.

I. Weight of the Factors

“None of the factors alone is dispositive, and courts must analyze them as a whole, rather than each in isolation.” *United States v. Rico-Soto*, 690 F.3d 376, 380 (5th Cir. 2012). The Government has successfully established four of the eight factors. The following factors weigh in favor of the Government: Proximity to the border, characteristics of the area, characteristics of the vehicle, and driver behavior. This Court concludes when the *Brignoni-Ponce* factors are viewed in their totality, reasonable suspicion existed to conduct the permissible roving patrol stop.

IV. CONCLUSION

For the foregoing reasons, the motion to suppress is **DENIED**.

It is so **ORDERED**.

SIGNED February ____, 2023

XXXXXXXXXX
United States District Judge

Applicant Details

First Name	Stayce		
Last Name	Evans		
Citizenship Status	U. S. Citizen		
Email Address	stayce.evans@law.bison.howard.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 1155 Ripley Street City Silver Spring State/Territory Maryland Zip 20910 Country United States </td> </tr> </table>	Address	Street 1155 Ripley Street City Silver Spring State/Territory Maryland Zip 20910 Country United States
Address			
Street 1155 Ripley Street City Silver Spring State/Territory Maryland Zip 20910 Country United States			
Contact Phone Number	4044922661		

Applicant Education

BA/BS From	State University of West Georgia
Date of BA/BS	December 2015
JD/LLB From	Howard University School of Law
	http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=50906&yr=2011
Date of JD/LLB	May 11, 2024
Class Rank	25%
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	Yes
Moot Court Name(s)	Huver I. Brown Trial Advocacy Moot Court Team

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Professional Organization

Organizations	Just the Beginning Organization
---------------	---------------------------------

Recommenders

Gavil, Andrew
 agavil@law.howard.edu
 202-806-8018

Whitesel, Nathaniel
 nkwhitesel@gmail.com

VanWye, Sarah
 SVanwye@law.howard.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Stayce L. Evans

Wheaton, MD 20902

stayce.evans@law.bison.howard.edu, 404-492-2661

Judge Leslie Abrams Gardner
201 West Broad Avenue
Albany, Georgia 31701

June 12, 2023

Dear Judge Gardner:

I am a third-year student at Howard University School of Law. I write to apply for a clerkship in your chambers for the 2024–2026 term, or any subsequent term. I am interested in clerking for many reasons, but I will limit myself to three. First, as an aspiring trial lawyer, I want to learn practical litigation skills that can inform my career. Second, I enjoy legal research and writing, and I would appreciate that experience being the focus of my first post-graduation job. Last, as a young Black lawyer, the mentorship I will gain from a clerkship is immeasurable.

My professional and education experiences not only led me to my current summer associate position at Davis Polk & Wardell LLP but will also make me a successful clerk in your chambers. For five years before law school, I worked for the local court system in Dekalb County, Georgia. There, I became extensively experienced with our case management system and worked closely with judges to manage the flow of various processes in the courtroom.

During my 1L summer, I interned with U.S. District Judge Reggie B. Walton in the District for the District of Columbia. I conducted legal research and drafted a memorandum opinion on civil asset forfeiture and the Freedom of Information Act which was ultimately published in the Federal Supplement.

As a 2L, I gained extensive on-your-feet lawyering skills which taught me how to quickly analyze issues and how to communicate better. For example, I served as a law clerk for the Public Defender Service for the District of Columbia in its Juvenile Services Program. I represented detained youth in delinquency hearings before an administrative law judge. I also served as a member of the Huver I. Brown Trial Advocacy Team, where my oral advocacy skills garnered my teammates and I regional champion honors in the Student Trial Advocacy Competition hosted by the American Association for Justice.

Enclosed are my résumé, transcripts, and a writing sample. My recommenders Professor Andrew Gavil, Professor Sarah VanWye, and Assistant U.S. Attorney Nathaniel Whitesel will email you their letters of recommendation directly. Please let me know if you need any additional information. Thank you for your time.

In Peace and Equity,


Stayce Evans

Stayce L. Evans

Wheaton, MD

stayce.evans@law.bison.howard.edu, 404-492-2661

EDUCATION

Howard University School of Law, Washington, D.C.

Juris Doctor Candidate

Expected May 2024

GPA/Ranking: 87.40/ Top 20%

Activities: Regional Champion–American Association for Justice 2023 Student Trial Advocacy Competition; Henry F. Ramsey Dean’s Fellow; Research Assistant–Professor Tiffany Williams Brewer; Contracts Teaching Assistant–Professor Alice Thomas; Vice President–Huver I. Brown Trial Advocacy Moot Court Team; Vice Chair–Orientation 2022

The University of West Georgia, Carrollton, GA

Bachelor of Science, cum laude, in Criminology with a minor in Psychology

December 2015

GPA: 3.5

SELECTED LEGAL EXPERIENCE

Davis Polk & Wardwell, New York City, NY

Summer Associate

May 2023–Present

- Conduct legal research and prepare internal briefs on class certification, diversity jurisdiction, and statutory interpretation
- Develop presentation talking points and summarize a 500-page report on reparations into digestible material

Public Defender Service for the District of Columbia, Washington, D.C.

Law Clerk, Juvenile Services Program

August 2022–November 2022

- Represented detained youth in disciplinary, detention, and placement hearings before an administrative law judge
- Conducted confidential interviews and legal rights orientations for newly detained youth
- Assisted youth in drafting complaints on conditions of confinement to the oversight body of the juvenile detention facility

United States District Court for the District of Columbia, Washington, D.C.

Judicial Intern to the Honorable Reggie B. Walton, Senior Judge

May 2022–August 2022

- Conducted legal research and drafted memorandum opinions and bench memoranda on civil asset forfeiture, the Freedom of Information Act, and the Immigration and Nationality Act
- Peer reviewed memorandum opinions and judicial orders drafted by co-interns and law clerks in preparation for publication in the Federal Supplement
- Recorded notes for chambers discussions on status hearings, motion hearings, and trials before the Court

Dekalb County Court System, Decatur, GA

Deputy Clerk III and Senior Tribunal Technician

June 2015–May 2017 and November 2018–June 2021

- Drafted court orders, subpoenas, and other legal documents for the Judge’s review
- Prepared detailed notes of court proceedings, recorded the need for specific actions including child custody arrangements, and assigned parent attorneys
- Managed filings on civil and criminal actions including dispositions, commitment orders, and detention orders

OTHER PROFESSIONAL EXPERIENCE

Starbucks, Atlanta, GA

Shift Supervisor

February 2018–November 2018

- Managed daily business activities and supervised a team of four to five employees per shift

Teach For America, New Orleans, LA

Lead Teacher

June 2017–September 2017

- Lead social studies classroom instruction for 20 to 30 seventh and eighth grade students

COMMUNITY INVOLVEMENT AND INTERESTS

Habitat for Humanity | House Plants | Console Video Games | James Webb Space Telescope | Cycling

Howard University
Washington, DC 20039

Student No:@03035897

Date Issued:25-MAY-2023 OFFICIAL

Record of : Stayce L Evans

Current Name:Stayce L Evans

** Warning - No Address **

Issued To : STAYCE EVANS

Course Level : Law

Current Program

Degree : Juris Doctor
Program : Juris Doctor
College : School of Law
Campus : West/Law

Subj	No.	C	Title	Cred	Grade	Pts	R
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INSTITUTION CREDIT:

Fall 2021

School of Law
Law
First-Time Professional

LAW	507	M	Leg. Reg.	3.00	88	264.00
LAW	617	M	Torts	4.00	86	344.00
LAW	619	M	Civil Procedure I	4.00	88	352.00

Earned Hrs	GPA-Hrs	QPts	GPA
11.00	11.00	960.00	87.27

Spring 2022

School of Law
Law
Continuing

LAW	612	W	Constitutional Law I	3.00	85	255.00
LAW	613	W	Legal Reasoning Research Writ	4.00	86	344.00
LAW	614	W	Property	4.00	89	356.00
LAW	615	M	Contracts	5.00	87	435.00
LAW	616	W	Criminal Law	3.00	83	249.00

Earned Hrs	GPA-Hrs	QPts	GPA
19.00	19.00	1639.00	86.26

Good Standing

Summer 2022

School of Law
Law
Continuing

LAW	580	M	Judicial Externship Exp	6.00	P	0.00
LAW	792	M	CD:Business Org	4.00	90	360.00

Earned Hrs	GPA-Hrs	QPts	GPA
10.00	4.00	360.00	90.00

Fall 2022

School of Law
Law
Continuing

LAW	551	M	CD: Capital Punishment	2.00	88	176.00
LAW	621	M	Constitutional Law II	3.00	87	261.00
LAW	654	M	Legal Writing II	2.00	90	180.00
LAW	680	M	Federal Courts	3.00	86	258.00

Earned Hrs	GPA-Hrs	QPts	GPA
10.00	10.00	875.00	87.50

Good Standing

Subj	No.	C	Title	Cred	Grade	Pts	R
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INSTITUTION CREDIT:

Spring 2023

School of Law
Law
Continuing

LAW	629	W	Evidence	4.00	89	356.00
LAW	642	W	Criminal Procedure I	3.00	85	255.00
LAW	698	W	CD: Supreme Ct Jurisprudence	3.00	88	264.00
LAW	727	W	Education Law	3.00	91	273.00
LAW	890	W	Trial Advocacy Moot Court	2.00	P	0.00

Earned Hrs	GPA-Hrs	QPts	GPA
15.00	13.00	1148.00	88.31

Good Standing

Fall 2021

LAW	613	M	Legal Reasoning Research Writ	0.00	In Prog	Course
LAW	615	M	Contracts	0.00	In Prog	Course

Fall 2022

LAW	890	M	Trial Advocacy Moot Court	0.00	In Prog	Course
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Fall 2023

LAW	687	W	Professional Responsibility	3.00	In Prog	Course
LAW	689	M	Race, Law & Change	3.00	In Prog	Course
LAW	804	M	Criminal Justice Clinic Exp	6.00	In Prog	Course

Transcript Totals	Earned Hrs	GPA Hrs	Points	GPA
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TOTAL INSTITUTION	65.00	57.00	4982.00	87.40
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TOTAL TRANSFER	0.00	0.00	0.00	0.00
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OVERALL	65.00	57.00	4982.00	87.40
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-----END OF TRANSCRIPT-----



GRADING POLICY/GRADE CUT-OFFS

THE CURRENT GRADING POLICY AND GRADE CUT-OFFS FOR THE CLASSES OF 2023 AND 2024 ARE AS FOLLOWS:

OUT OF A SCALE OF 100

CLASS OF 2023

Class Rank	Cum GPA
Top 10%	89.97-above
Top 15%	88.77-above
Top 25%	86.90-above
Top 33%	85.13-above

CLASS OF 2024

Class Rank	Cum GPA
Top 10%	88.7-above
Top 15%	87.6-above
Top 25%	86.17-above
Top 33%	84.67-above

FINAL GRADES SYSTEM

A	90-100
B	80-89
C	70-79
D	60-69
F	50-59

4-POINT SCALE CONVERSION

Cum GPA	Standard GPA
90-100	4.0
89-85	3.99 - 3.50
84-80	3.40 - 3.00
79-75	2.99 - 2.50
74-70	2.49 - 2.00
69-65	1.99 - 1.50
64-60	1.49 - 1.00
59-less	.99 - less

A J.D. student will be placed on academic probation if the student has a cumulative weighted grade point average between 72.00 and 74.99 after the end of the first year. A student who is on academic probation after the end of the first year must also participate in the upper-class Academic Support Program. Failure to participate in the Academic Support Program is grounds for dismissal. With the exception of the summer semester, probation shall terminate during the semester in which the student obtains a cumulative GPA of 75.

HOWARD UNIVERSITY

SCHOOL OF LAW

June 14, 2023

Re: Letter of Recommendation: Mr. Stayce L. Evans

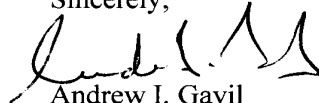
Dear Judge:

It is my pleasure to write in support of my student, Mr. Stayce L. Evans, who has applied to your chambers for a clerkship commencing January 2025. Mr. Evans is diligent, thoughtful, and continually striving to build his knowledge and legal skills. He welcomes intellectual challenges and, as you will see from his resume, cover letter, and hopefully a personal interview, he will embrace the opportunity to clerk with enthusiasm, bringing his excellent communication skills and past clerking experiences to your chambers. His interest in justice is deep and genuine.

Through two courses this past academic year, both of which are highly relevant to his interest in clerking, I had first-hand opportunities to observe Mr. Evans and assess his professional potential. In Federal Courts and the Supreme Court Jurisprudence seminar that I co-teach, Mr. Evans was intellectually curious and an active and engaged participant in class discussions. In the seminar, the students work collaboratively as a simulated "Supreme Court" to decide three cases pending during the current term. Each student then drafts an opinion resolving the issues in the case. Mr. Evans immersed himself in the legal issues and arguments of the parties and produced three well-written and thoughtful opinions. His reflective observations enriched the class.

Mr. Evans will be a committed and focused clerk, who will work well with others and continue to grow and excel as a professional. I commend him to you for consideration without any reservations. Please contact me at your convenience at either 202-806-8018 or agavil@law.howard.edu if I can be of any further assistance as you make your hiring decisions.

Sincerely,



Andrew I. Gavil
Professor of Law



2900 Van Ness Street, NW
Washington, DC 20008

(202) 806-8000
Fax (202) 806-8428
law.howard.edu

June 12, 2023

Your Honor:

I write to enthusiastically recommend Stayce Evans for a clerkship position in your chambers. I previously served as a law clerk to the Honorable Reggie B. Walton of the U.S. District Court for the District of Columbia between July 2020 and July 2022. I supervised Stayce while he served as a judicial intern for Judge Walton. This recommendation derives solely from my personal impressions of Stayce that developed during our time working together and as a result of his wonderful efforts in chambers.

Stayce served as one of Judge Walton's judicial interns during the 2022 summer semester. Judge Walton's judicial interns have three essential tasks. One, they draft substantive opinions, orders, and legal memoranda for Judge Walton's law clerks. This substantive work is for real cases and often involves matters actively pending before the Judge. Second, they provide edit and bluebooking support for law clerks—a job that serves an essential role in chambers' work product review process. Third, they attend sessions of court, which allows them to familiarize themselves with how a federal judge runs his courtroom. In sum, the interns serve in much the same function as the law clerks, albeit with a much lighter case load and within a structured program. The interns are supervised with an eye toward mentorship and growth as future attorneys.

Stayce's performance in all areas was excellent. As Stayce's supervisor, I found that his work was high-quality and laudably thorough. For his primary substantive assignment, Stayce was tasked with analyzing a pending motion on Judge Walton's civil docket and producing an extensive draft memorandum opinion addressing that motion. Though the motion in question involved a complicated set of intertwined issues and factual complexities, Stayce excelled in tackling this task. Stayce showed incredible attention to detail and held significant ownership over his work. His written work product was direct, clear, and exceeded expectations. Moreover, Stayce's skills clearly grew with each additional project given to him as he readily incorporated critiques and suggestions from the law clerks.

Stayce also displayed professionalism and a strong work ethic that stood out from his fellow interns. Throughout the semester, Stayce would regularly seek meetings with me and the other clerks regarding his progress and performance.

During these meetings, Stayce demonstrated strong communication skills of a caliber that would serve well in any judge's chambers. Stayce also displayed a clear interest in public service and the dedication required for such work.

On a more personal note, Stayce is simply a wonderful person to be with in a work environment. He took the initiative to really get to know Judge Walton and his law clerks and was well-liked in chambers. As pandemic restrictions for interns in our courthouse eased, Stayce took frequent advantage of opportunities to engage with our team in-person in a health-conscious way. I have no reservations in predicting that Stayce has a bright future ahead of him and would excel in the responsibilities demanded of a judge's law clerk. I would be happy to discuss his qualifications for a clerkship in further detail and can be reached by phone at (540) 207-8049.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathaniel K. Whitesel", with a stylized, sweeping flourish at the end.

Nathaniel K. Whitesel

HOWARD UNIVERSITY

SCHOOL OF LAW

June 12, 2023

Re: Letter of Recommendation for Stayce Evans

Dear Judge:

I write in strong support of Stayce Evans's application to serve as a law clerk in your chambers. I had the pleasure of working with Stayce as his legal writing professor during his 2L year. Based on Stayce's performance in class and because of his excellent interpersonal skills, I—along with the rest of the legal writing faculty—selected him as a Writing Center Dean's Fellow for the 2023-24 school year, where he will assist first-year law students with their writing assignments. Having served several years as a federal judicial law clerk myself, I believe Stayce has the intelligence, analytical skills, work ethic, and professionalism to be an outstanding law clerk.

As a student in my legal writing class, Stayce stood out as an eager and dedicated student. Stayce was always prepared for class and participated meaningfully and thoughtfully in class discussions. He grasped complex legal concepts quickly and demonstrated an ability to apply law to facts with ease. In addition to his strong performance in class, Stayce was a regular visitor to my office hours, and he worked hard to incorporate my feedback in his work. Indeed, his eagerness to learn and grow in his career was evident in every interaction we had. In these interactions, I found Stayce to be focused, smart, and a true pleasure to work with. His written work product was excellent.

Stayce's determination and ability will make him successful in whatever he chooses to pursue. I recommend him for a clerkship in your chambers without reservation. Should you have any questions, please feel free to reach out to me at svanwye@law.howard.edu.

Sincerely,

/s/ Sarah VanWye

Sarah VanWye
Assistant Professor of Lawyering Skills



2900 Van Ness Street, NW
Washington, DC 20008

(202) 806-8000
law.howard.edu

Stayce Evans

Wheaton, MD

stayce.evans@law.bison.howard.edu, 404-492-2661

WRITING SAMPLE

The attached writing sample is an excerpt from an appellate brief I submitted for Legal Writing II, Appellate Advocacy. The fictitious case involved a Honduran citizen's appeal to the 7th Circuit of the lower court's decision to deny her application for asylum.

Ms. Berta Franco, a transgender woman, was a volunteer who connected transgender individuals with supportive health and education services. While accompanying her client to the Honduran National Police Station to file a report, Ms. Franco was sexually assaulted by one of the officers. Soon after the incident, Ms. Franco received threatening text messages. Then, one evening while leaving the office where she volunteered, she was again assaulted.

After her assaults, Ms. Franco fled Honduras and commenced an asylum action in the United States. The immigration judge who reviewed her asylum application denied it, and the Board of Immigration Appeals affirmed the denial. In opposition to Ms. Franco's asylum application, the Government maintained that there was no sufficient connection between Ms. Franco's transgender identity and the harm she experienced to amount to a well-founded fear of future persecution.

The questions presented were:

Under the Immigration and Nationality Act,

1. Does the threatened violence and assaults visited on Ms. Franco by the police amount to harms that rise to the level of persecution?
2. Does Ms. Franco have a well-founded fear of future persecution, based on her past harms and the fact that the Honduran government failed to adequately address the increase in physical violence and killings of transgender persons?
3. Was the persecution Ms. Franco experienced or her well-founded fear of future persecution on account of her transgender identity?

I represented the petitioner-appellant, Ms. Berta Franco. The excerpt that follows addresses the first two issues—Ms. Franco's past persecution and well-founded fear of future persecution. It is important to note that my Legal Writing Professor preferred if we did not cite to the record in our argument section.

STATEMENT OF ISSUES

Under the Immigration and Nationality Act,

Does Ms. Franco's harm rise to the level of persecution, where she was violently threatened and assaulted soon after attempting to report a prior sexual assault by the police?

Does Ms. Franco have a well-founded fear of future persecution, based on her past harms and the fact that the Honduran government failed to adequately address the increase in physical violence and killings of transgender persons?

STATEMENT OF THE CASE

Berta Franco, the petitioner, is a 23-year-old transgender woman and citizen of Honduras. R. at 6.¹ At birth, Ms. Franco was named Alberto Fernando by her parents, but around age 14 started going by the name Berta and publicly presenting her feminine identity. R. at 6–7. Ms. Franco is a noble Honduran citizen who volunteered with Chicas, an organization that connects transgender individuals with supportive health and education services. R. at 7. Ms. Franco takes pride in confidently expressing her transgender identity despite the negative attention and violence transgender people face in Honduras. Id.

While volunteering, Ms. Franco accompanied one of her clients to the Honduran National Police station to report that the client had been assaulted. Id. Immediately after the officers determined that Ms. Franco is a transgender woman, they stopped taking her seriously. Id. The officers began mocking Ms. Franco and one officer thrustled towards Ms. Franco with his crotch, asking “[i]sn’t this what you want[.]” Id. Ms. Franco slapped the officer and fled the station after other officers surrounded the two while reaching for their batons. Id.

A few days later, Ms. Franco received an anonymous text message that read “[b]e careful, Alberto, or we will give it to you good.” Id. Ms. Franco did not recognize the number but believed the sender to be the Honduran National Police. Id. Ms. Franco later attempted to follow up on the report of her client and file a complaint of her own about the officers’ treatment at the station but was placed on hold before the line was disconnected. Id.

The following day, Ms. Franco was assaulted and misgendered by three unknown men immediately after leaving the Chicas office. Id. One of the men yelled “[s]enor, you better watch out[, n]ext time we will get you” and threw a glass bottle at Ms. Franco’s head. R. at 8.

¹ R at X denotes citation to the record on appeal.

Although Ms. Franco did not recognize the men, she felt terrified and made a statement to the police regarding the incident. Id. The officer took Ms. Franco's statement but admonished her for walking alone late at night. Id. Ms. Franco later learned that a close friend, who was also a transgender woman, was arrested, detained for a week, and beaten while in the custody of the Honduran National Police. Id. Two weeks after learning this information, Ms. Franco fled Honduras. Id.

Despite adding a hate crime amendment to the penal code, Honduras is known to have the highest murder rate of transgender people in the world. R. at 28, 60. Local media and human rights non-governmental organizations have reported an increase in killings of Honduran LGBTI persons in 2019. R. at 28. In a nine-month period there have been 16 hate crimes against transgender women and seven LGBTI persons killed within a two-month period. Id. In response, the Honduran government has investigated and released messages on social media condemning the violence. Id.

After fleeing Honduras, Ms. Franco arrived in the United States on April 5th, 2019. R. at 4, 6. She was apprehended by the Department of Homeland Security shortly after her arrival and placed in removal proceedings. R. at 4. On April 29, 2019, Ms. Franco filed an application for asylum relief. Id. The Immigration Judge held a hearing on Ms. Franco's application on July 16, 2021, which was subsequently denied on November 23, 2021. Id. The BIA affirmed the Immigration Judge's decision without opinion on February 13, 2022. R. at 3.

In denying Ms. Franco's asylum application, the Immigration Judge ruled that she did not meet the definition of a refugee. R. at 5. Further, the Immigration Judge held that Ms. Franco's harm did not rise to the level of persecution, nor did she have a well-founded fear of future

persecution and that the harm she experienced was not on account of her transgender identity.

Id.

SUMMARY OF THE ARGUMENT

Ms. Franco has established that she has experienced past persecution and a well-founded fear of future persecution on account of membership in a particular social group, namely that of transgender identity. The threat of physical harm and being physically assaulted is indeed conduct that threatens both life and freedom thus meeting the definition of persecution. Nevertheless, the Immigration Judge ignored the evidence in the record establishing a pattern or practice of persecution against transgender and LGBTI persons in Honduras. The ample evidence that transgender persons were detained, assaulted, and killed is more than enough to establish a well-founded fear of future persecution. Lastly, based on the evidence in the record including Ms. Franco's persecution coupled with the persecution that transgender and LGBTI persons in Honduras experience generally, it is clear that such persecution is on account of Ms. Franco's transgender identity.

Because Ms. Franco's harm rises to the level of persecution, and she has established an objectively reasonable fear of future persecution, this Court should reverse and remand the BIA's ruling. This Circuit has defined persecution as "punishment or the infliction of harm for political, religious, or other reasons that [the United States] does not recognize as legitimate." Roman v. INS, 233 F.3d 1027, 1034 (7th Cir. 2000). The harm faced need not threaten life or freedom, but it must rise above the level of mere harassment. Id. Here, Ms. Franco's harm rises above mere harassment because after she attempted to report the sexual assault at the police station, anonymous perpetrators threatened and attempted to assault her. These actions all took place after the police determined that Ms. Franco was a transgender woman, demonstrating

punishment or infliction of harm for a reason that the United States does not recognize as legitimate.

To satisfy an objectively reasonable fear of future persecution, Ms. Franco must show that there is a pattern or practice of persecution of an identifiable group to which she belongs. Ayele v. Holder, 564 F.3d 862, 868 (7th Cir. 2009). This pattern or practice must be demonstrated by a “systematic, pervasive, or organized effort to kill, imprison, or severely injure members of the protected group.” Mitreva v. Gonzales, 417 F.3d 761, 765 (7th Cir. 2005). Also, the pattern or practice must be perpetrated or tolerated by state actors. Id. Here, the record shows that seven members of the LGBTI community, which Ms. Franco admittedly belongs, were killed in a two-month period and 16 hate crimes were reported over a nine-month period. Further, there has been no serious effort on behalf of the Honduran government to deter or address the violence that LGBTI persons face. Based on the facts in the record, Ms. Franco has established past persecution and a well-founded fear of future persecution on account of her transgender identity and thus the BIA’s ruling should be reversed.

STANDARD OF REVIEW

Where, as is the case here, the BIA summarily adopts the Immigration Judge’s decision, this Court reviews the Immigration Judge’s factual findings and reasons as though they were the BIA’s. Mousa v. INS, 223 F.3d 425, 428 (7th Cir. 2000). Whether a person is a refugee is a factual determination that is reviewed under the substantial evidence standard. Urukov v. INS, 55 F.3d 222, 227 (7th Cir. 1995). The substantial evidence standard requires this Court to only uphold the BIA’s decision when it is “supported by reasonable, substantial, and probative evidence on the record considered as a whole.” Sivaainkaran v. INS, 972 F.2d 161, 163 (7th Cir. 1992) (citing 8 U.S.C. § 1105(a)(4)). Where the evidence “compel[s] a contrary conclusion” to

the BIA's decision, this Court should reverse and remand. Hernandez-Jimenez v. Sessions, 710 F. App'x 257, 259 (7th Cir. 2018).

ARGUMENT

I. **This Court should reverse and remand the BIA's ruling because it is not supported by substantial evidence as Ms. Franco has established past persecution and a well-founded fear of future persecution.**

Asylum relief is available where the petitioner satisfies the definition of refugee. 8 U.S.C. § 1158(b)(1)(A); *see also* Ndonyi v. Mukasey, 541 F.3d 702, 711 (7th Cir. 2008) (“An asylum applicant can prove her claim through circumstantial evidence”). A refugee is defined as someone who is unable or unwilling to return to their home country “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1101(a)(42)(A). Therefore, the petitioner may qualify for asylum by showing either past persecution or a well-founded fear of future persecution. Begzatowski v. INS, 278 F.3d 665, 669 (7th Cir. 2002). Where the petitioner establishes past persecution or a well-founded fear of future persecution, she must then establish that such persecution was on account of her transgender identity. 8 U.S.C. § 1101(a)(42)(A). This Court should reverse and remand the BIA's ruling because Ms. Franco has demonstrated past persecution and a well-founded fear of future persecution.

A. **Ms. Franco's harm rises to the level of persecution because she received physical threats and was physically assaulted which is conduct that rises above mere harassment and threatens freedom or life.**

This Court should reverse and remand the lower court's ruling that Ms. Franco's harm did not rise to the level of persecution because Ms. Franco has presented evidence that the harm she experienced threatened freedom and life. Although the statute does not provide a definition of persecution, this Court has described persecution as “punishment or the infliction of harm for

political, religious, or other reasons that [the United States] does not recognize as legitimate.”

Roman, 233 F.3d at 1034. The harm faced by the petitioner does not need to threaten life or freedom, but it must rise above mere harassment. Id.; Tamas-Mercea v. Reno, 222 F.3d 417, 424 (7th Cir. 2000) (“[N]on-life threatening violence and physical abuse also fall within this category.”). This Court has defined harassment as the targeting of members of a specific group for adverse treatment but without physical force. Stanojkova v. Holder, 645 F.3d 943, 948 (7th Cir. 2011) (providing an example that a police officer following a taxi driver and ticketing them whenever they exceed the speed limit by one mile per hour would be harassment).

Actions rise above mere harassment where the perpetrators attempt to follow through on their threats. Roman, 233 F.3d at 1035. In Roman, the applicant’s tires were punctured, and he received an anonymous phone call warning him that if he did not “shut up,” he would have more serious problems. Id. at 1030. The BIA’s decision that the petitioner did not suffer past persecution was upheld because the petitioner did not come forward with any evidence that the “government orchestrated, or at least sanctioned” the harm he experienced. Id. at 1035. However, this Court found that these threats surpassed mere harassment because the perpetrators attempted to follow through on the threats when they slashed the applicant’s tires. Id.

Similarly, here, Ms. Franco’s harm rises above the level of mere harassment because the perpetrators attempted to follow through on their threats when they followed Ms. Franco and threw a glass bottle at her head. Additionally, the assailants also yelled to Ms. Franco “[s]enor, you better watch out[, n]ext time we will get you.” This language coupled with the bottle throwing is like the incidents in Roman where the petitioner’s tires were slashed, and he was told that if he did not “shut up” he would have more serious problems. Although the language

directed at Ms. Franco is not a direct match, it comes with the same message that something worse could happen in the future.

Ms. Franco has presented evidence showing that the “government orchestrated, or at least sanctioned,” the threats or assault against her. Roman, 233 F.3d at 1035. Here, unlike Roman, where the petitioner was unable to make a connection between the government and the harm experienced, Ms. Franco can. Ms. Franco’s harm began shortly after fleeing from the police department where she was sexually assaulted by one of the officers who tried to flip up her skirt. This is unlikely a simple coincidence because Ms. Franco attempted to report the police mistreatment but was placed on hold before the line was disconnected. This indicates that the Honduran National Police were not interested in taking Ms. Franco’s report of mistreatment. Further, the short lapse of time between the sexual assault at the police station and the threats show a connection between these incidents and the police. Lastly, after Ms. Franco was assaulted on the street, she reported the attack to police who did nothing more than admonish her. Therefore, the Honduran National Police “orchestrated, or at least sanctioned” the conduct because Ms. Franco attempted to bring the incidents to their attention, to no avail.

Conditions rise to the level of persecution where a protected social group is singled out for political violence or other dangerous conditions that are life threatening. Begzatowski, 278 F.3d at 670. In Begzatowski, the evidence showed that the applicant’s social group was segregated and physically abused as a way of punishment or infliction of harm. Id. For example, the applicant’s social group of Albanian soldiers were physically assaulted by military leadership and used as human shields while Serbian soldiers were left alone. Id. at 667. This Court found these actions to rise above mere harassment and constitute persecution because these actions singled out a specific group. Id. at 670.

Here, Ms. Franco has presented reasonable evidence of physical abuse against transgender people who have been singled out in Honduras. Ms. Franco recounted for the Immigration Judge that her good friend was arrested, detained, and badly beaten while in the custody of the Honduran National Police. Additionally, the record also includes the abuse that LGBTI people face generally, including hate crimes, physical violence, and killings that does not appear to affect the entire nation. These actions are like those in Begzatowski where Albanian soldiers were physically abused and used as human shields, because these actions show that LGBTI and transgender people are singled out in Honduras.

The government asserts that the entire Honduran population will be granted asylum based on country conditions. This is simply not the case. The record is clear that LGBTI and transgender people are singled out in Honduras. Further, Ms. Franco herself has been subjected to dangerous conditions including being assaulted with a glass bottle after being threatened and sexually assaulted. Because these actions are sufficiently life threatening to Ms. Franco and indicate that transgender persons are singled out, they rise above mere harassment and are in fact persecution.

Because the harm experienced by Ms. Franco rises to the level of persecution, the BIA's ruling is not supported by substantial evidence. Thus, this Court should reverse and remand the BIA's ruling that Ms. Franco has not suffered past persecution.

B. Ms. Franco has established a well-founded fear of future persecution based on a pattern or practice of persecuting transgender persons that has been tolerated and perpetrated by state actors.

Ms. Franco has a sufficient well-founded fear of future persecution because she has established a pattern or practice of persecution against Honduran LGBTI persons that has been

both tolerated and perpetrated by state actors. Therefore, this Court should reverse and remand the BIA's ruling that Ms. Franco did not have a well-founded fear of future persecution.

Where the petitioner has established past persecution, there is a rebuttable presumption of a well-founded fear of future persecution. Begzatowski, 278 F.3d at 669. A petitioner may also establish a stand-alone well-founded fear of future persecution. 8 C.F.R. § 208.13(b). A well-founded fear of future persecution requires Ms. Franco to show both a genuine, subjective fear of persecution and that an objectively reasonable person in Ms. Franco's circumstances would fear persecution if returned to Honduras. Sivaainkaran, 972 F.2d at 163. Here, based on Ms. Franco's credible testimony about her subjective fear, only the objective component is at issue. R. at 5.

The objective component requires Ms. Franco to show that (1) there is a reasonable possibility that she would be singled out or (2) that there is a pattern or practice of persecution of an identifiable group to which the petitioner belongs. Ayele, 564 F.3d at 868. Membership in a group that faces a high probability of persecution is enough to establish a risk of persecution if the petitioner is deported to that country. Velasquez-Banegas v. Lynch, 846 F.3d 258, 261 (7th Cir. 2017).

The showing of "pattern or practice" need not be definite or even likely, there must only be a reasonable possibility of persecution. Ayele, 564 F.3d at 868. In Ayele, the Court found the applicants' familial membership the strongest basis for persecution. Id. at 869. The applicant's family was well known for their political involvement and all members of the applicant's immediate family were either exiled, had disappeared, been imprisoned, tortured, or was under house arrest. Id. at 870. This Court held that because every member of the applicant's immediate family was subjected to persecution there was a reasonable possibility of a "pattern or

practice” of persecuting members of the applicant’s family. Id. at 869. In Ayele, the Immigration Judge failed to fully analyze this pattern, thus remand was warranted. Id.

Here, as a transgender woman, Ms. Franco can establish a reasonable possibility of persecution of members of the LGBTI community in Honduras. Like in Ayele, where the applicant’s family was imprisoned and tortured there is ample evidence of similar incidents here. In Honduras, members of the LGBTI community are subjected to discrimination, physical violence, and killings. More specifically, seven LGBTI individuals were killed in a two-month period and 16 hate crimes were reported over a nine-month period. Additionally, Ms. Franco is close friends with a transgender woman who was detained for a week by the Honduran National Police and beaten resulting in a black eye and large welts. This persecution, like that in Ayele where various immediate family members were persecuted, is sufficient to establish a “pattern or practice” of persecution because it has happened to multiple members of the LGBTI community including some who are close to Ms. Franco. Thus, establishing a reasonable possibility of persecution of LGBTI persons. Further, like Ayele, the Immigration Judge failed to fully analyze these facts, thus warranting remand.

To establish a pattern or practice of persecution “[t]here must be a systematic, pervasive, or organized effort to kill, imprison, or severely injure members of the protected group, and this effort must be perpetrated or tolerated by state actors.” Mitreva, 417 F.3d at 765 (quotation omitted). In Mitreva, the applicant was a member of the Roma ethnicity. Id. at 762. The applicant relied on the human rights report to show a systematic, pervasive, or organized effort that Roma persons were subjected to attacks by private citizens, arbitrary arrests, and beatings by police officers. Id. at 765. This Court held that the BIA’s ruling was supported by substantial evidence because although the treatment of Roma persons was unpleasant, the State

Department's country report indicated that anti-Roma violence was declining, and the incidents of police harassment appeared to be isolated. Id. Further, this Court held that because the local government had taken serious efforts at reform, including an affirmative action policy and an anti-discrimination statute, the persecution was not perpetrated or tolerated by state actors. Id. at 766.

Unlike Mitreva, where the record indicated that there was a reduction in violence, there is no indication that violence against transgender persons in Honduras has decreased, in fact the opposite is true. Also, there has been no serious government efforts at reform like those in Mitreva where policy and statutory changes were made. The Honduran government has done nothing more than issue a statement on social media and investigate the crimes. There has been a hate crime amendment in Honduras but violence against LGBTI persons persisted after this.

Furthermore, Ms. Franco can establish a "systematic, pervasive, or organized" effort to kill and severely injure members of the LGBTI community that is perpetrated and tolerated by state actors. The United States Department of State Honduras 2019 Human Rights Report and 2020 Human Rights Watch Report illustrate the horrible persecution that LGBTI and transgender persons face in Honduras. Local media and numerous LGBTI human rights non-governmental organizations have reported that violence against transgender persons is on the rise in Honduras. Specifically, there have been 16 reported hate crimes against transgender women in a nine-month period. In fact, between June and July seven LGBTI persons were killed. Honduras is also known to have the highest rate of murders of transgender people in the world. Because there are numerous crimes of the same sort against LGBTI and transgender persons this indicates at least an organized effort against these groups.

With an increase in physical violence and killings against LGBTI and transgender persons along with a minimal response from the Honduran government this demonstrates a pattern or practice of persecution against LGBTI and transgender persons that is perpetrated and tolerated by state actors. Thus, Ms. Franco can establish a well-founded fear of future persecution and this Court should reverse and remand the BIA's ruling.

CONCLUSION

For all of the forgoing reasons, petitioner-appellant Berta Franco respectfully requests that this Court reverse the judgment below and remand for further consideration.

Applicant Details

First Name **Brigid**
 Last Name **Fitzpatrick**
 Citizenship Status **U. S. Citizen**
 Email Address brigidf@umich.edu
 Address

Address
Street
45751 Bristol Circle
City
Novi
State/Territory
Michigan
Zip
48377
Country
United States

Contact Phone Number **2489461600**

Applicant Education

BA/BS From **University of Michigan-Ann Arbor**
 Date of BA/BS **December 2020**
 JD/LLB From **The University of Michigan Law School**
<http://www.law.umich.edu/currentstudents/careerservices>
 Date of JD/LLB **May 3, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Michigan Journal of Law Reform**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/
 Externships **No**

Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Carroll, Maureen
msclaw@umich.edu
734-764-0687

C.deBaca, Luis
ldebaca@umich.edu
734-647-4209

Friedman, Richard
rdfrdman@umich.edu
734-647-1078

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Brigid Fitzpatrick
45751 Bristol Circle
Novi, MI 48377
(248) 946-1600
brigidf@umich.edu

May 09, 2023

The Honorable Leslie Gardner
C.B. King United States Courthouse
201 West Broad Avenue, 3Rd Floor
Albany, GA 31701-2566

Dear Judge Gardner:

I am a rising third-year student at the University of Michigan Law School and I am writing to apply for a clerkship in your chambers for the 2024-2025 term.

As someone committed to advocating for low-income and marginalized communities, I have sought out opportunities in law school to gain practical experience so that I can be an effective litigator. I have had the opportunity to work as a student attorney in the Michigan Innocence Clinic and help exonerate people who were wrongfully convicted. Through the clinic, I have gotten valuable experience writing memoranda and briefs, while also getting practical experience with the criminal judicial system. I was also selected to serve as an Articles Editor for the Michigan Journal of Law Reform, which has given me experience editing academic research. This summer I am working for the Great Lakes Environmental Law Center where I will have the opportunity to write memoranda and research legal and policy issues. I hope that clerking will give me further opportunities to hone my research and writing skills, as well as exposure to a wide range of legal issues.

I have attached my resume, law school transcript, and a writing sample for your review. Letters of recommendation from the following professors are also attached:

- Professor Richard Friedman: rdfdrman@umich.edu, 734-647-1078.
- Professor Maureen Carroll: msclaw@umich.edu, 734-764-0687.
- Professor Luis CdeBaca: ldebaca@umich.edu, 734-647-4209.

Thank you for your time and consideration.

Respectfully,

Brigid Fitzpatrick

Brigid Fitzpatrick

45751 Bristol Circle, Novi MI 48377

248-946-1600 • brigidf@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL

Juris Doctor

Ann Arbor, MI

Expected May 2024

GPA: 3.952 (historically top 2%)

Activities: Journal of Law Reform, *Articles Editor*, Vol. 57 (Note in progress)

Honors: Certificate of Merit recipient for Evidence; Certificate of Merit recipient for Constitutional Law

UNIVERSITY OF MICHIGAN

Bachelor of Arts, with High Distinction, in Political Science and Spanish

Ann Arbor, MI

Graduated December 2020

Honors: University Honors (2017 - 2020)

James B. Angell Scholar (GPA-based award)

William J. Branston Freshman Prize (GPA-based award)

Activities: President, Residential College LGBT Forum

Undergraduate Research Assistant, Political Science Department

EXPERIENCE

GREAT LAKES ENVIRONMENTAL LAW CENTER

Summer Law Intern

Detroit, MI

May 2023 - August 2023

UNIVERSITY OF MICHIGAN LAW SCHOOL

Research Assistant for Professor Friedman

Ann Arbor, MI

January 2023 - March 2023

- Researched evidentiary issues such as admission of character evidence and impeachment

MICHIGAN INNOCENCE CLINIC

Student Attorney

Ann Arbor, MI

August 2022 - May 2023

- Investigated cases on behalf of inmates who are innocent of the crimes for which they have been convicted
- Wrote memos analyzing potential ineffective assistance and new evidence claims

FARMWORKER LEGAL SERVICES

Summer Law Intern

Kalamazoo, MI

May 2022 - August 2022

- Provided legal advice to clients on issues such as workers' compensation and breach of contract claims
- Wrote memos and briefs analyzing topics such as visa eligibility and employment discrimination claims
- Created educational materials regarding workers' tax obligations and rights

PANERA BREAD

Cashier

Novi, MI

September 2020 - August 2021

- Managed stress in a fast-paced environment; worked with team members to create positive environment

SIERRA CLUB

Political intern

Northville, MI

May 2020 - August 2020

- Educated voters in southeast Michigan via phone banking about key environmental issues

ADDITIONAL

Languages: Spanish (proficient)

Volunteer: Assistant ESL instructor at an Ann Arbor public middle school, campaign volunteer with the Michigan Democratic Party

Control No: E196342601

Issue Date: 05/17/2023

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Fitzpatrick, Brigid
Student#: 62769701



Paul R. Johnson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
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Fall 2021 (August 30, 2021 To December 17, 2021)

LAW	510	004	Civil Procedure	Maureen Carroll	4.00	4.00	4.00	A-
LAW	520	003	Contracts	Albert Choi	4.00	4.00	4.00	A
LAW	540	001	Introduction to Constitutional Law	Daniel Halberstam	4.00	4.00	4.00	A+
LAW	593	013	Legal Practice Skills I	Timothy Pinto	2.00		2.00	S
LAW	598	013	Legal Pract:Writing & Analysis	Timothy Pinto	1.00		1.00	S

Term Total				GPA: 4.000	15.00	12.00	15.00	
Cumulative Total				GPA: 4.000		12.00	15.00	

Winter 2022 (January 12, 2022 To May 05, 2022)

LAW	530	002	Criminal Law	Luis CdeBaca	4.00	4.00	4.00	A
LAW	580	001	Torts	Kyle Logue	4.00	4.00	4.00	A
LAW	594	013	Legal Practice Skills II	Margaret Hannon	2.00		2.00	S
LAW	660	001	Boundaries of Citizenship	Rebecca Scott	3.00	3.00	3.00	A

Term Total				GPA: 4.000	13.00	11.00	13.00	
Cumulative Total				GPA: 4.000		23.00	28.00	

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Fitzpatrick, Brigid
Student#: 62769701



Paul R. Johnson
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Grade
Fall 2022 (August 29, 2022 To December 16, 2022)								
LAW	630	001	International Law	Karima Bennoune	3.00	3.00	3.00	A-
LAW	669	001	Evidence	Richard Friedman	4.00	4.00	4.00	A+
LAW	976	001	Michigan Innocence Clinic	David Moran	4.00	4.00	4.00	A-
				Elizabeth Cole				
				Imran Syed				
LAW	977	001	Michigan Innocence Clinic Sem	David Moran	3.00	3.00	3.00	A-
				Elizabeth Cole				
				Imran Syed				
Term Total				GPA: 3.871	14.00	14.00	14.00	
Cumulative Total				GPA: 3.951		37.00	42.00	
Winter 2023 (January 11, 2023 To May 04, 2023)								
LAW	404	001	SexualOrien/GenderID & the Law	Maureen Carroll	2.00	2.00	2.00	A+
LAW	601	001	Administrative Law	Nina Mendelson	4.00	4.00	4.00	A
LAW	900	430	Research	Luis CdeBaca	1.00	1.00	1.00	S
LAW	976	001	Michigan Innocence Clinic	David Moran	4.00	4.00	4.00	A-
				Elizabeth Cole				
				Imran Syed				
LAW	977	001	Michigan Innocence Clinic Sem	David Moran	3.00	3.00	3.00	A
				Elizabeth Cole				
				Imran Syed				
Term Total				GPA: 3.953	14.00	13.00	14.00	
Cumulative Total				GPA: 3.952		50.00	56.00	

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Fitzpatrick, Brigid
Student#: 62769701



Paul R. Johnson
University Registrar

Course		Section	Load		Graded	Towards
Subject	Number	Number	Course Title	Instructor	Hours	Program
Fall 2023 (August 28, 2023 To December 15, 2023)						
Elections as of: 05/17/2023						
LAW	626	001	Immigrant Justice Lab	Melissa Borja	3.00	
LAW	677	001	Federal Courts	Gil Seinfeld	4.00	
LAW	686	001	Federal Indian Law	Kirsten Carlson	3.00	
LAW	741	001	Interdisc Prob Solv	Luis CdeBaca	3.00	
Slavery and the Built Environment: The Plantation						
Slavery/Built Env: Plantation						
LAW	803	001	UAdvocacy for Underdogs	Andrew Buchsbaum	2.00	

Remarks:

25-Jul-2019 MICH SPANISH PROFICIENCY

End of Transcript
Total Number of Pages 3

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University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

- F Fail.
- H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.
- I Incomplete.
- P Pass when student has elected the limited grade option.*
- PS Pass.
- S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)
- T Mandatory pass when student is transferring to U of M Law School.
- W Withdrew from course.
- Y Final grade has not been assigned.
- * A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

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The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109

May 12, 2023

The Honorable Leslie Gardner
C.B. King United States Courthouse
201 West Broad Avenue, 3Rd Floor
Albany, GA 31701-2566

Dear Judge Gardner:

I write in enthusiastic support of Brigid Fitzpatrick's application for a judicial clerkship.

I first had the pleasure of teaching Brigid in my Civil Procedure course during the Fall 2021 semester. Brigid's intelligence and thoughtfulness were immediately apparent. Over the course of the semester, their intellectual curiosity and enthusiasm for legal doctrine became apparent as well. Brigid's comments and questions greatly enriched our classroom discussions, and they were wonderfully judicious about their participation, saving their more esoteric questions for office hours. Brigid came to office hours frequently, and I enjoyed our conversations there immensely.

I was delighted to have the opportunity to work with Brigid again in my seminar on Sexual Orientation, Gender Identity, and the Law during the Winter 2023 semester. Brigid again made wonderful contributions to our class discussions, and it was clear that they had developed a deep and wide knowledge of the law over the two years since I'd last taught them. I was especially impressed with the way that Brigid referred back to other students' comments, not only absorbing and reflecting upon what others had said, but also building upon those earlier comments with sophistication and nuance.

The students in my seminar were required to complete a substantial writing project, and Brigid knocked theirs out of the park. Brigid chose a project, from a list of options that I provided, about a particular set of Michigan statutes and legislative proposals. In less capable hands, the final product could have been a dry list of items, presented without analysis or explanation. Instead, Brigid produced a well-organized, beautifully written, and wonderfully informative paper. It can be difficult for law students to balance the need to be precise with the need to be thorough, but Brigid struck that balance perfectly. Their efforts earned them an A+, which is a grade that I had not awarded to a student in that seminar in several years.

In sum, I have no doubt that Brigid will be an excellent clerk, and I support their application without hesitation or qualification. Please feel free to contact me if you have any questions about their candidacy.

Sincerely,

Maureen S. Carroll

Maureen Carroll - msclaw@umich.edu - 734-764-0687

MICHIGAN LAW
UNIVERSITY OF MICHIGAN
625 South State Street
Ann Arbor, Michigan 48109

Luis C.deBaca
Ambassador (ret.)
Professor from Practice

May 22, 2023

The Honorable Leslie Gardner
C.B. King United States Courthouse
201 West Broad Avenue, 3Rd Floor
Albany, GA 31701-2566

Dear Judge Gardner:

I write to enthusiastically recommend Brigid Fitzpatrick for a judicial clerkship in your chambers. Brigid is a rising 3L at Michigan Law who was in my Criminal Law class. Brigid demonstrated the highest merit in assignments and on the final examination as well as in classroom interventions and interactions with counterparts. I am convinced Brigid will thrive in a judicial environment and will be a credit to your chambers; I enthusiastically recommend this talented young lawyer-to-be and encourage you to join those of us at Michigan Law who have been lucky enough to work with Brigid.

Brigid Fitzpatrick is a quiet superstar. If you are looking for clerks who combine a rapid-fire analytical legal mind with a reassuring manner that furthers collaboration, Brigid would be a perfect fit.

I have had the opportunity to observe Brigid Fitzpatrick's intellect and interpersonal skills over the last two years. Brigid of course has outstanding grades, at a law school with a very tough grading policy. Standing out in my class not only through an ability to understand not only the black letter of Criminal Law but also being able to confront how the justice system is propelled by or in conflict with the Purposes of Punishment and society's competing interests in security and personal freedom, Brigid was noteworthy for earning one of the few A grades that I assigned. Always prepared and thinking of next level questions, Brigid navigated the classroom and the often upsetting fact patterns of criminal law with an inquisitive spirit that neither backed away from tough discussions nor crossed the line into "gunning." I was frankly not surprised when I unmasked my blind grades to find Brigid exactly where I had expected: standing out amongst a very talented group of peers. But for this outstanding student such a grade is almost de rigueur – Brigid has earned the Certificate of Merit (for the highest grade) in both 1L and upper-level courses.

I don't want to lend the impression that Brigid is simply a grade machine. Passionate about service, Brigid has taken on tough practice areas ranging from farmworker legal services to exoneration/innocence work. Brigid harnesses Spanish skills and a keen legal intellect on behalf of these marginalized and often-ignored members of our society; it has been inspiring to see Brigid live the values (justice, access, restoration, balancing) that we discussed in CrimLaw – values that to many classmates appeared to be a frustrating detour from the rules as opposed to the driving force of criminal law as a manifestation of societal values and norms.

To that end, I am particularly enthusiastic about how Brigid approached the research project we worked together on this semester. When we first discussed working on a topic concerning service regimes for human trafficking victims I was glad to see that Brigid was willing to push to the next level on assessing how states respond to crimes of power. Brigid identified foreign jurisdictions to place in conversation with the US victim care scheme, especially how it treats undocumented immigrants who may have been held in contemporary forms of enslavement. By looking at the United Kingdom, Italy, and the Netherlands, Brigid was able to undertake a comparative law project in destination countries with similar economies, but different legal systems. As is the United States, these countries are all signatories to the United Nations anti-trafficking protocol, and Italy, Holland and the UK are governed by the EU anti-tracking trafficking Directive (despite Brexit, Britain has continued its own collaborative, focus with Europe on human trafficking law and policy).

Brigid's work on this project has been exemplary. The care with which Brigid has analyzed the logics and operation of the victim protection schemes in different legal and political contexts is impressive. Having set up much of the US victim-services approach during my time in government and having negotiated with the EU and the countries in question in my diplomatic role, I was struck by how Brigid as an arms-length legal researcher was able to quickly grasp the working of the regimes in a way that rang true given my personal involvement with the systems. The resulting recommendations will be useful to my policy and practice counterparts, and the article that Brigid will publish from this work will be an important contribution.

I'm sure you have gotten the sense by now how enthusiastic I am about what Brigid Fitzpatrick will bring to the practice of law. I am excited about this trajectory because I am convinced that Brigid will be a strong voice and a compassionate advocate for justice. Accordingly, and without reservation, I strongly urge you to join us in seeing the up-sides of this stellar candidate and to

Luis C.deBaca - ldebaca@umich.edu - 734-647-4209

select Brigid Fitzpatrick for a clerkship. If you have any further questions, please contact me at ldebaca@umich.edu or 703.470.1171.

Sincerely,

Luis C.deBaca

U.S. Ambassador (ret.)
Professor from Practice

Luis C.deBaca - ldebaca@umich.edu - 734-647-4209

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL
HUTCHINS HALL
ANN ARBOR, MICHIGAN 48109-1215

RICHARD D. FRIEDMAN
Alene and Allan F. Smith Professor of Law

TELEPHONE: (734) 647-1078
E-MAIL: rdfrdman@umich.edu

June 10, 2023

The Honorable Leslie Gardner
C.B. King United States Courthouse
201 West Broad Avenue, 3Rd Floor
Albany, GA 31701-2566

Dear Judge Gardner:

I understand that Brigid Fitzpatrick is applying to you for a clerkship. I think very highly of her and am delighted to recommend her. She's terrific.

Brigid grew up in Novi, Michigan, right near Ann Arbor; her Dad has worked for GM for years. She went to this University for college, did very well, and continued here for law school.

Brigid has been a standout in our school; she has not had a single grade out of the A range. She was a student in my Evidence class in her third semester, and *the* outstanding student in the class. She was excellent in class sessions – consistently prepared and deeply engaged in the material. I always knew she would give a well-considered, on-point answer to my questions, and she asked good ones of her own. I gave three quizzes and a final that had both essays and a multiple-choice section. She did very well on the multiple choice, with the second highest score in the class, and had the best scores both on the quizzes and on the final-exam essays. Her totals were a little bit higher than those of a student in the class who has a GPA over 4.0 (and to whom I'd given an A+ in Civ Pro), and nobody else was very close. Bridget's superb performance in my class was in keeping with the record she has compiled throughout law school.

Indeed, she did so well in my Evidence course that afterwards I asked if she would do some research helping me to update a portion of the textbook. She readily agreed, and her work was as good and as helpful as I could have expected. So I then asked her to do some historical research, going back to the 17th and 18th centuries. She had no background in anything of the sort, but she is intellectually curious and she loves research and theory, so again she agreed and again her work was first-rate and very helpful.

Brigid was drawn to law school by the desire to advocate for low-income and historically marginalized communities, and she has spent a great deal of time in a wide variety of public-interest activities. But she is one of those rare students who loves all of law school, and as her historical work for me demonstrates, she enjoys engaging in any legal issue, no matter how unfamiliar it may be to her initially. And she is an excellent writer, with a talent for clear and nuanced explanation. She has made good progress on a law-journal Note on a topic on T visas for victims of human trafficking; because she has broad peripheral vision, she is including a comparative element. Brigid says she may be interested in academia down the line, and if she goes that route her intellectual firepower and curiosity and her writing ability make her a very good bet to succeed.

Brigid is personally pleasant, modest, and professional. I have enjoyed working with her, and I think any judge will as well. I am confident that, whatever direction Brigid chooses to take her career, she will make her mark. But first she will be a great law clerk.

If I can tell you anything more about Brigid, please do not hesitate to write or call. Meanwhile, thanks for your kind consideration.

Sincerely,

Richard D. Friedman

Richard Friedman - rdfrdman@umich.edu - 734-647-1078

Brigid Fitzpatrick

45751 Bristol Circle, Novi MI 48377
248-946-1600 • brigidf@umich.edu

This is an excerpt of a memo that I wrote during my summer internship at Farmworker Legal Services, which I was given permission to use. It is entirely my work and has not been edited by anyone other than myself. I was asked to analyze whether a client might be eligible for a U visa, for victims of crimes, or a T visa, for victims of human trafficking. I have redacted the client and employer's names and removed the "Facts" section to protect the client's confidentiality. I have also removed some sections of the analysis for length.

SUMMARY

This is an excerpt of a memo which analyzes whether a client who was originally from Mexico and who worked as a farmworker on an H-2A visa (hereafter referred to as “Client”) could be eligible for a U or a T visa, which are defined below. Client came to the U.S. to work on an orchard picking fruit. The hours he was expected to work were much longer than he expected, and his passport was confiscated soon after he arrived, preventing him from leaving. This memo concludes that, based on his experiences, Client may be able to demonstrate eligibility for either the U or the T visa.

DISCUSSION

Client is likely eligible for a U visa, but it would be more difficult for him to prove that he is eligible for a T visa. A U visa is a set aside for victims of certain qualifying crimes who have suffered physical or mental abuse and who have been or would be helpful to law enforcement. A T visa is for victims of severe trafficking in persons who are in the U.S. because of that trafficking, who have been or would be helpful to law enforcement, and who would suffer extreme hardship involving unusual or severe form if they were not allowed to stay in the United States. Because of the high bar imposed by the T visa’s extreme hardship requirement, Client is more likely to be able to prove that he is eligible for a U visa than a T visa, but we will likely want to do further facts investigation either way, and additional facts may change this analysis.

I. U-VISA ELIGIBILITY

a. Qualifying Criminal Activity

Fraud in Foreign Labor Contracting

One qualifying criminal activity under the U visa statute is fraud in foreign labor contracting. 8 CFR § 214.14(a)(9). 18 U.S.C. § 1351 defines fraud in foreign labor contracting as

(1) recruiting, soliciting, or hiring a person outside of the United States for purposes of employment in the United States (2) by means of materially false or fraudulent pretenses, representations or promises regarding that employment (3) knowingly and with intent to defraud. 18 U.S.C. § 1351; see also United States v. Bart, 888 F.3d 374, 379 (8th Cir. 2018).

Based on statements from clients and the job order given to us, we likely have a strong case that Employer committed fraud in foreign labor contracting. First, Employer clearly did hire Client from outside the United States for purposes of employment within the United States. Client is from a foreign country and learned about this job opportunity while in that foreign country. He was put in contact with Supervisor, who interviewed and hired Client as an H-2A worker.

Further, Employer's representations regarding that employment were materially false. On the job order, Employer stated that workers would work six hours per day, six days a week, and that they wouldn't be expected to work Sundays. In reality, Client was working twelve hours per day Monday through Saturday, and ten hours per day on Sundays. Although the job order stated that workers may be asked to work more hours than what was listed, it also stated that they would not be required to work additional time. However, it seems that Client and other workers were in fact pressured to work more hours than what was listed, with Client stating that workers once attempted to leave an hour early to do laundry and that the orchard owner made them continue working. Further, Client was paid less than he was told he would be. The job order states that he would be paid \$14.72 an hour or \$30 per box of apples picked. Client stated that he believed he was paid \$113 per day or \$20 per box of apples picked, and he said he would sometimes have to return part of this to his employer if they decided he was not productive enough. If we can prove this to be the case, we would likely be able to prove that Employer's

representations were materially false; however, we do not currently have paystubs that support this.

Finally, it seems likely that Employer made these representations knowingly and with intent to defraud, although we may want more evidence to reach this conclusion. As Supervisor was the one who initially interviewed Client and made false representations about the conditions of the work, and he was the one to clock the employees' hours, it seems very likely that he both intentionally and knowingly defrauded people in order to encourage them to work for Employer. Further, it's likely that he had a personal stake in doing so, as Client stated in his intake that some workers paid Supervisor when they arrived in the United States. Further, Client said in his intake that he complained to both Supervisor and the owner of the orchards that the terms of the contract were different from the hours that they were working, so it is almost certain that they were aware that the terms of the contract were a misrepresentation of the actual work being done.

Involuntary Servitude

Another qualifying criminal activity under the U visa statute is involuntary servitude. 8 CFR § 214.14(a)(9). In Kozminski, the Supreme Court defined involuntary servitude as a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process, and that involuntary servitude does not encompass psychological coercion. United States v. Kozminski, 487 U.S. 931 (1988).

The Trafficking Victims Protection Act of 2000 expanded this definition by defining involuntary servitude as “any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious physical harm or restraint; or the abuse or threatened abuse of the legal system.” In

Bradley, the First Circuit Court of Appeals agreed that “[I]f a person is compelled to labor against his will by any one of the means prohibited by the forced labor statute, such service is forced, even if he is paid or compensated for the work.” United States v. Bradley, 390 F.3d 145, 154 (1st Cir. 2004).

The threat of deportation may fall within the types of legal coercion referenced by the Supreme Court and by the Victims Protection Act of 2000 in their definitions of involuntary servitude. In Kozminski, the Supreme Court contemplated that, “threatening . . . an immigrant with deportation could constitute the threat of legal coercion that induces involuntary servitude.” Kozminski, 487 U.S. at 948; see also Kiwanuka v. Bakilana, 844 F. Supp. 2d 107 (D.C. Dist. 2012) (holding that where an employee’s passport was confiscated upon arrival and she was threatened with deportation if she stopped working, the employment conditions constituted involuntary servitude).

Here, Employer’s confiscation of Client’s passport and threats of deportation likely amount to abuse of the legal system constituting involuntary servitude. Soon after arriving in the United States, Employer asked all the workers for their passports and voting ID card. Initially, he said that the company just wanted to make copies and would return them, but Efrain later said that they would not be returned until the workers finished their contract and that they should not leave without permission. He told them that if they leave, police or immigration officials could arrest them. This is not a case of an employer merely warning employees of legal realities, as Employer created the conditions in which the workers could be detained or deported by taking their documentation. Further, Client did feel as though he was unable to leave as a result of these threats. He was afraid of being deported, and although he wanted to quit and asked for his passport multiple times, he felt that he could not leave because he did not have his passport.

Therefore, Client was threatened by abuse of the legal system which gave him no alternative but to continue working or risk deportation, amounting to involuntary servitude.

b. Physical or Mental Abuse

In addition to proving that a qualifying crime occurred, Client must be able to demonstrate that substantial physical or mental abuse was suffered as a result of being a victim of the qualifying crime. Courts will consider factors such as the nature of the injury suffered; the severity of the perpetrator's conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim. Although no single factor is considered a prerequisite, the existence of one or more factors also does not create a presumption of substantial physical or mental abuse. 8 C.F.R. § 214.214(b)(1).

Administrative agencies have quite a bit of discretion on this factor. In Garcia v. Audubon Cmty. Mgmt., LLC, the court held that the plaintiffs' showing that they suffered physical harm from lack of nourishment and shame from inability to purchase food was sufficient to demonstrate substantial physical or mental abuse. Garcia v. Audubon Cmty. Mgmt., LLC, No. 08-1291, 2008 U.S. Dist. LEXIS 31221, at *11-*12 (E.D. La. Apr. 15, 2008). However, in Bazaldua-Hernandez v. Rodriguez, the court affirmed the AAO's decision to deny the plaintiff's U visa application, because he could not prove that he suffered physical harm, his diagnosed PTSD and generalized anxiety were also related to other factors beyond his victimization, and his petition was made 10 years after his victimization. Bazaldua-Hernandez v. Rodriguez, No. EDCV 15-1383-JGB, 2016 U.S. Dist. LEXIS 149283, at *13 (C.D. Cal. Oct. 26, 2016).

Here, it will likely be difficult to prove that Client suffered substantial mental or physical abuse with the facts that we currently have. Client did state in his screening that he suffered mild depression, fear, and loneliness as a result of his victimization. However, this alone would probably not be enough to prove substantial mental abuse. He also states that he barely slept because of the long hours that they were forced to work, a direct result of both the fraud in foreign labor contracting and of the involuntary servitude. This could help to prove substantial physical abuse. Further, he said that they were often rushed taking lunch breaks and that they were only able to go grocery shopping when the supervisor allowed them to – if he was deprived of food as a result of either of these, that also could help prove physical abuse. It could be helpful that Client talked to family, friends, and his pastor about the situation, as they could submit letters describing any changes in Client’s mental state. If Client underwent a psychological evaluation that proved that he has ongoing mental health issues as a result of the abuse he suffered, that would help make a stronger case. However, without any documentation and because of the short duration of the infliction of the harm, it would likely be difficult to get this to the level of substantial physical and mental abuse.

II. T-VISA ELIGIBILITY

a. Labor Trafficking

In order to be eligible for a T visa, the applicant must have been the victim of a severe form of trafficking in persons. Under federal law, this is sex trafficking or labor trafficking. Labor trafficking is defined as when someone recruits, harbors, transports, provides, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.

An employer making false representations about employment conditions in order to hire someone from outside the U.S. and then threatening them with abuse of the legal system amounting to involuntary servitude so that they are unable to leave constitutes labor trafficking. In Ouloch v. Orina, the court describes the case of a plaintiff who accompanied her employer to the United States after signing a contract stating that she would make \$8.00 an hour and receive overtime pay and who was then only paid \$150 a month. Her passport was confiscated by the defendant and she was not allowed to leave the house unescorted, and the defendant threatened her well-being. The plaintiff was granted a T visa, as this was determined to be labor trafficking. Oluoch v. Orina, 101 F. Supp. 3d 325, 328 (S.D. N.Y. 2015). Similarly, in Lipenga v. Kambalame, a woman who was recruited to come to the U.S. with the promise of fair working conditions and compensation, whose passport was confiscated, and whose employer threatened to have her deported if she stopped working was granted a T visa. Lipenga v. Kambalame, 219 F. Supp. 3d 517, 523-524 (D. Md. 2016).

Here, Client was recruited and hired under materially false claims and was then threatened with deportation if he left. Employer stated that workers would work for six hours a day six days a week, and that they may be requested but not required to work longer hours. However, Client was instead expected to work 12 hours a day Monday through Saturday and 10 hours a day on Sundays. When workers attempted to leave early, in order to go to the laundromat, they were berated by the orchard owner and told to stay. Further, he was told that he would be paid \$14.72 per hour or \$30 per box of apples, and he was instead paid \$20 per box of apples and said that he received \$113 per day. As mentioned above, we would likely want to try to find paystubs or other evidence that supports Client's claims as to how much he was making.

Further, as in the Ouloch and Lipenga cases, Client's passport was confiscated shortly after arrival. He was told that his passport would not be returned until he finished the contract. He was also told on more than one occasion that he would be arrested by the police or immigration if he left. Client genuinely felt as though he was unable to leave because of these threats. He wanted to quit and return to his home country, and he asked for his passport to be returned to him multiple times, but his employer refused to return his passport. Without any identification, he was afraid to stop working or leave unaccompanied. Because the employer created conditions under which he could be detained or deported and Client felt as if he had no other choice but to continue working, this constitutes legal coercion which obtained Client's involuntary servitude.

b. Extreme Hardship

The applicant must also be able to demonstrate that they would face extreme hardship involving unusual and severe harm if they were removed from the United States. This is a higher standard than mere extreme hardship and cannot be based solely on economic detriment or disruption to social and economic opportunities. 8 C.F.R. § 214.11(i)(1). Factors that may be considered include age and personal circumstances; serious physical or mental illness; the nature and extent of the physical and psychological consequences of the trafficking; impact of loss of access to the U.S. criminal justice system for purposes relating to the crimes perpetrated against the applicant; a reasonable expectation that the applicant would be severely penalized for being a victim of trafficking in the country that they return to; the likelihood of revictimization and the ability or willingness of foreign authorities to protect the applicant; the likelihood of harm that the trafficker would cause the applicant in the foreign country; and the likelihood that the applicant's safety would be threatened by the existence of civil unrest or armed conflict. Suzanne

B. Seltzer et. al., T Visa Manual: Identification and Legal Advocacy for Trafficking Survivors A-12 (4th ed. 2018). These considerations don't need to be connected to the trafficking; for example, if the applicant has developed a medical condition that can be better treated in the U.S., that would be a valid example of extreme hardship. Id. Further, while economic need is not relevant, if economic issues may lead an applicant to being re-trafficked, that is a relevant factor. Id.

Here, it is unlikely that we have sufficient evidence to demonstrate extreme hardship involving unusual and severe harm. We may be able to make the case that returning to his country of origin would put Client in an economic position that would leave him likely to be subject to labor trafficking again. However, this on its own is unlikely to be enough. If there were evidence that Client has a physical or psychological condition in need of treatment in the U.S. or that Client is at risk of facing retaliation in his country of origin, that would significantly contribute to the likelihood of proving extreme hardship.

CONCLUSION

Client may be eligible for a U visa, but with the information that we currently have, he is unlikely to be eligible for a T visa. To obtain a U visa, it seems likely that he could prove he suffered at least one eligible crime – fraud in foreign labor contracting or involuntary servitude. He may also be able to prove physical or mental abuse, although we may want to gather more documentation or statements from friends and family in his home country. To obtain a T visa, he can likely prove that he was a victim of labor trafficking, but with the evidence that we currently have, it would be difficult for him to prove that he would suffer extreme hardship if he was removed from the United States.

Applicant Details

First Name	Jacob
Middle Initial	H.
Last Name	Gregory
Citizenship Status	U. S. Citizen
Email Address	jhgregory@johnmarshall.edu

Address	Address Street 50 Circle Drive City Hampton State/Territory Georgia Zip 30228 Country United States
---------	--

Contact Phone Number	(404)-860-4976
Other Phone Number	(404)-860-4952

Applicant Education

BA/BS From	Clayton College & State University
Date of BA/BS	May 2018
JD/LLB From	Atlanta's John Marshall Law School
	https://www.johnmarshall.edu/
Date of JD/LLB	May 21, 2023
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	AJMLS Law Journal
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships	No
----------------------------------	-----------

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Walker-Cash, Erika
ewalker-cash@johnmarshall.edu
(678) 916-2659

Burch, Kathleen
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(678) 916-2631

Van Detta, Jeffrey
jeffrey.vandetta@gmail.com
678-916-2644

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jacob H. Gregory

(404) 860-4976

Jhgregory@johnmarshall.edu

<https://www.linkedin.com/in/jacob-gregory-a05789151/>

Dear Judge Leslie Abrams Gardner,

I am writing to express my strong interest in a federal clerkship position with your honorable court. As a recent graduate of Atlanta's John Marshall Law School, and with a passion for judicial proceedings and legal research, I am eager to contribute to the court's mission of upholding justice and ensuring fair outcomes. It would be an honor to contribute my skills and dedication to the efficient functioning of your court.

During law school, I fine-tuned my written and oral advocacy skills through my participation in the AJMLS Law Journal as Executive Legislative Editor, getting certified in General Civil Mediation, and assisting in all things legal writing for the school's Legal Writing, Research & Analysis courses as a Legal Writing Teaching Fellow. Moreover, in my time as a Legal Writing Teaching Fellow, not only did I hone in both my analytical and research-oriented skills, but also I sharpened my ability to navigate complex legal issues and provide concise and well-reasoned recommendations.

Amidst my academic and professional experiences, I developed strong analytical skills, attention to detail, and the ability to manage multiple tasks efficiently. I thrive in collaborative environments and am adept at working with diverse groups of people, including judges, attorneys, and court staff. I am confident in my ability to quickly grasp complex legal issues, conduct thorough research, and draft well-written opinions and memoranda as, perhaps, demonstrated by my 25+ CALI awards including those of which were earned in coursework such as Scholarly Writing, First Amendment Speech Seminar, and Legal Writing, Research & Analysis I, II, and III.

The opportunity to contribute to your court's work, while learning from esteemed jurists, is a tremendous privilege that I am eager to embrace. I am confident that my dedication, skills, and passion for the law would make me a valuable asset to your team. Enclosed in this application is my resume, law school transcript, and a writing sample for your review. I would welcome the opportunity to discuss my qualifications further and to provide any additional information you may require. Thank you for considering my application. I look forward to the possibility of contributing to your court's important work.

Jacob H. Gregory

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Hampton, GA. 30228
(404) 860-4976
Jhgregory@johnmarshall.edu

EXPERIENCE

EXECUTIVE LEGISLATIVE EDITOR | Atlanta's John Marshall Law School
Spring 2022 – Spring 2023

LEGAL WRITING TEACHING FELLOW | Atlanta's John Marshall Law School
Fall 2021 – Spring 2023

PATIENT ADVOCATE | Hemophilia of Georgia
Fall 2018

EDUCATIONAL BACKGROUND

JURIS DOCTORATE | Atlanta's John Marshall Law School |
Valedictorian | Summa Cum Laude
Fall 2019 – 2023

B.S. OF INTEGRATIVE STUDIES | Clayton State University
2016 – 2018

A.A.S. IN AUTOMOTIVE TECHNOLOGY | Southern Crescent Technical College
2013 – 2015

AWARDS & RECOGNITIONS

ORDER OF THE QUILL | Exemplar Scholar and Marshall of the Order
Spring 2023

AJMLS OUTSTANDING GRADUATE AWARD
Spring 2023

AJMLS OUTSTANDING STUDENT OF THE QUARTER AWARD
Fall 2022

BEST ORALIST AWARD | Best Appellant Advocate in LWRA III
Spring 2021

25+ CALI AWARDS

SKILLS

- Mediation
- Research
- Analysis
- General Legal Writing
- Memo-Writing
- Brief-Writing
- Agreement Drafting
- Oral Argument
- Editing
- Conflict Resolution
- Organization, Time-Management, & Communication
- Negotiation
- Advocacy

CERTIFICATIONS

GENERAL CIVIL MEDIATION |
Jul. 2021

ADVANCED LEGAL RESEARCH |
Thomson Reuters | *Mar. 2020*

**PRACTICE-READY
CERTIFICATION** | Lexis Nexis |
Mar. 2020

6/10/23, 8:15 PM

Student Transcript

June 10 2023

[Sign Out](#)

Transcript (Unofficial Copy)

000006367

Jacob Gregory

50 Circle Drive

Hampton, GA 30228

Date: 6/10/2023 8:14 PM

Dept	Course Section	Title	Grade	Repeat	Course Hours	Credit Attempt	Credit Earned	Quality Points	GPA
Fall 2019 ATL									
EVE	EE101E1	Legal Foundations/Academic Lab	P		1.0000	0.0000	1.0000	0.0000	
EVE	EE110E1	Contracts I	B+		3.0000	3.0000	3.0000	9.9900	
EVE	EE120E1	Torts I	A-		3.0000	3.0000	3.0000	11.0100	
EVE	EE204E2	Legal Writing, Research & Analysis I	A-		3.0000	3.0000	3.0000	11.0100	
TERM TOTALS:						9.0000	10.0000	32.0100	3.5567
Spring 2020 ATL									
EVE	EE111E1	Contracts II	CR		3.0000	0.0000	3.0000	0.0000	
EVE	EE121E1	Torts II	CR		3.0000	0.0000	3.0000	0.0000	
EVE	EE205E1	LWRA II	CR		3.0000	0.0000	3.0000	0.0000	
TERM TOTALS:						0.0000	9.0000	0.0000	0.0000
Summer 2020 ATL									
EVE	EE160E1	Criminal Law	HP		3.0000	0.0000	3.0000	0.0000	
TERM TOTALS:						0.0000	3.0000	0.0000	0.0000
Fall 2020 ATL									
EVE	EE105E1	Civil Procedure I	A		3.0000	3.0000	3.0000	12.0000	
EVE	EE115E1	Real Property I	A-		3.0000	3.0000	3.0000	11.0100	
EVE	EE550E1	Race and Law	P		2.0000	0.0000	2.0000	0.0000	
Dean's List	TERM TOTALS:					6.0000	8.0000	23.0100	3.8350
Spring 2021 ATL									
EVE	EE106E1	Civil Procedure II	A		3.0000	3.0000	3.0000	12.0000	
EVE	EE116E1	Real Property II	A		3.0000	3.0000	3.0000	12.0000	
EVE	EE206E1	Legal Writing, Research and Analysis III	A-		3.0000	3.0000	3.0000	11.0100	
Dean's List	TERM TOTALS:					9.0000	9.0000	35.0100	3.8900
CLASS RANK:			1 out of 24						
Summer 2021 ATL									
EVE	EE375E1	Wills, Trusts, and Estates	A		3.0000	3.0000	3.0000	12.0000	
EVE	EE620E1	Alternate Dispute Resolution	P		3.0000	0.0000	3.0000	0.0000	
Dean's List	TERM TOTALS:					3.0000	6.0000	12.0000	4.0000

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Student Transcript

CLASS RANK: 1 out of 19

Fall 2021

EVE	EE155E1	Constitutionl Law I	A	3.0000	3.0000	3.0000	12.0000		
EVE	EE165E1	Criminal Procedure	A	3.0000	3.0000	3.0000	12.0000		
EVE	EE171E1	Evidence	A	3.0000	3.0000	3.0000	12.0000		
EVE	EE497E1	GA Practice & Procedure	A	2.0000	2.0000	2.0000	8.0000		
Dean's List		TERM TOTALS:			11.0000	11.0000	44.0000	4.0000	

CLASS RANK: 1 out of 20

Spring 2022

EVE	EE150E1	Business Organizations	A-	3.0000	3.0000	3.0000	11.0100		
EVE	EE156E1	Constitutnl Law II	A	3.0000	3.0000	3.0000	12.0000		
EVE	EE675E1	Mastering Legal Principles I	A	3.0000	3.0000	3.0000	12.0000		
Dean's List		TERM TOTALS:			9.0000	9.0000	35.0100	3.8900	

CLASS RANK: 1 out of 20

Summer 2022

EVE	EE175E1	Professional Responsibility	A	3.0000	3.0000	3.0000	12.0000		
Dean's List		TERM TOTALS:			3.0000	3.0000	12.0000	4.0000	

CLASS RANK: 1 out of 12

Fall 2022

DAY	DD270D1	Sem: Scholarly Legal Writing	A	2.0000	2.0000	2.0000	8.0000		
EVE	EE462E1	Domestic Relations	A	3.0000	3.0000	3.0000	12.0000		
EVE	EE514E1	Sem: Constitutional Law First Amendment	A	3.0000	3.0000	3.0000	12.0000		
EVE	EE676E1	Mastering Legal Principles II	A	3.0000	3.0000	3.0000	12.0000		
Dean's List		TERM TOTALS:			11.0000	11.0000	44.0000	4.0000	

CLASS RANK: 1 out of 19

Spring 2023

DAY	DD215D1	Transactional Drafting (E/W)	B	3.0000	3.0000	3.0000	9.0000		
DAY	DD451D1	Semnr-Death Penalty (W)	A	2.0000	2.0000	2.0000	8.0000		
EVE	EE210E1	Pre-Trial Practice and Procedure (E/W)	B+	2.0000	2.0000	2.0000	6.6600		
EVE	EE635E1	Mastering Legal Skills	B-	3.0000	3.0000	3.0000	8.0100		
		TERM TOTALS:			10.0000	10.0000	31.6700	3.1670	

CUMULATIVE: 71.0000 89.0000 268.7100 3.7846

** GRADUATED JD -05/21/2023
**

Summa cum laude

Major: Law

College: JD Program -
Atlanta

End of Transcript



June 14, 2023

The Honorable Leslie Abrams Gardner
United States District Judge, Middle District of Georgia
United States District Court
201 West Broad Avenue
Albany, Georgia 31701

Re: Letter of Recommendation for Mr. Jacob Gregory

Dear Judge Gardner:

I enthusiastically write this letter in support of Mr. Jacob Gregory's application for a judicial clerkship in your chambers. Jacob is by far the most impressive student I have encountered in my 12 years at Atlanta's John Marshall Law School, a sentiment that is shared by many of my colleagues.

I had the pleasure of meeting and teaching Jacob in his first semester of law school. He immediately stood out as an engaged, avid learner with a strong, foundational work ethic. And so, I was not surprised when several years later, he was selected by the faculty to receive the 2023 Outstanding Graduate Award (OGA). Given that the faculty is comprised of lawyers, you can imagine how difficult it can be for us to reach a consensus about anything; however, this was not the case during the OGA selection process. Jacob, who earned the highest grade in over 20 of his law school courses, served as the Executive Legislative Editor of the Law Journal, and earned the Best Oralist Award in Legal Writing, was an easy, unanimous choice. His academic credentials are simply unmatched.

While Jacob's academic profile is stellar, it simply does not fully define him. He offers so much more than his grade point average and academic achievements. On the surface, it may appear that Jacob is naturally gifted or, that the pursuit of learning is an easy endeavor for him. But I am not sure if that is an accurate assessment. Even when it was clear that he was performing well above his peers, Jacob's effort, focus, and approach mirrored-and surpassed-those of my students who could not afford to take their academic success for granted. In short, Jacob works hard, always, and has high expectations of himself. And while Jacob is certainly the primary beneficiary of his hard work and effort, he has unselfishly ensured that his peers were also beneficiaries.



Jacob served as my Legal Writing Fellow for several years. In that unpaid role, he helped first-year students navigate law school generally, and legal writing specifically. My students, many who struggled academically, frequently reported that Jacob was accessible, helpful, approachable, and most important, kind. Jacob guided students with humility and grace, and never gave any indication that he was anything more than a peer who had a vested interest in their success. And that is what is truly most impressive about Jacob, his character. Jacob's future goal to become a civil rights attorney is completely aligned with the person that I have come to know and admire.

If given the opportunity, I have no doubt that Jacob will be an exceptional law clerk. He is an outstanding representative of the future of our profession.

Sincerely,

Erika Walker-Cash

Erika Walker-Cash
Associate Professor
Associate Dean of Academic Administration

Jacob Gregory

Professor Van Detta

Law Journal

February 17, 2023

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I. **Introduction: In a Post-Dobbs World, Should The Insular Cases Finally Be Overturned?**

After years of adherence to discriminatory, admittedly wrongly-decided, and constitutionally foundationless caselaw, should the Court finally turn the page and overrule the *Insular Cases*?¹ The Court's recent jurisprudence in *Dobbs* seems to provide the appropriate framework for doing just that. Striking away at the traditional reverence for precedent, the *Dobbs* Court elaborates against the "continued acceptance of *Roe* and *Casey*," stating that it has long been established "that *stare decisis* is 'not an inexorable command.'"² The Court buffers this argument in footnote 48 with an expansive line of over thirty "overruled important constitutional decisions."³ With this foundation present, the Court then overruled two uniquely important decisions in the face of *stare decisis*, using five factors that may now provide the structural analysis necessary to overrule a separate line of cases, the *Insular Cases*.

The factors set out by the Court are as follows: (1) "the nature of the Court's error"; (2) "the quality of the reasoning"; (3) "the 'workability' of the rules they imposed on the country"; (4) "their disruptive effect on other areas of the law"; and (5) "the absence of concrete reliance."⁴ After providing the historical context and modern consequences of the *Insular Cases* in Part II, as well as an overview of the abortion jurisprudence leading up to and through *Dobbs* in Part III, this article seeks, in Part IV, to discuss the erosion of *stare decisis* and to explain each of the five above factors as well as to compare these factors to those previously used by the Court in overruling other

¹ See generally Adriel I. Cepeda Derieux & Rafael Cox Alomar, Saying What Everyone Knows To Be True: Why Stare Decisis Is Not An Obstacle To Overruling The Insular Cases, 53 Colum. Hum. Rts. L. Rev. 721, 748-51 (2022) (discussing generally that the *Insular Cases* are rooted in discrimination and that both the territorial incorporation doctrine and differential treatment between lands that are incorporated and lands that are not incorporated are not found or provided for anywhere within the Constitution).

² *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2262 (2022).

³ *Id.* at 2263 (detailing over thirty important constitutional decisions that have been overruled).

⁴ *Id.* at 2265-66.

cases. This article will then conclude in Part VI, after demonstrating how the application of these factors militates in favor of overturning the *Insular Cases* in Part V.

Part V will explain the arguments both for and against overruling these cases. Moreover, it will show how the Court's recent jurisprudence, especially *Dobbs*, may aid the argument that *stare decisis* should not act as a barrier, standing in the way of overturning a line of cases that were “‘egregiously wrong’ on the day [they were] decided.”⁵ Instead, “the Court has acknowledged that *stare decisis* ‘is at its weakest’ when the Court considers its own constitutional interpretations since those ‘can be altered only by constitutional amendment or by overruling [its] prior decisions,’ unlike statutory interpretations, which can be overruled by Congress.”⁶ Here, with *stare decisis* at its weakest, both the *Insular Cases* and the, later to be discussed, territorial incorporation doctrine deserve little reverence, especially when critically viewed through the lens of the *Dobbs* factors as will be done in Part V of this article.⁷ In line with the First Circuit court's apt description, in *Aurelius Inv., LLC v. Puerto Rico*, of the *Insular Cases* as a “discredited lineage

⁵ *Id.* at 2265.

⁶ Derieux & Alomar, *supra* note 1, at 745-46.

⁷ *Id.* at 746; See generally *Downes v. Bidwell*, 182 U.S. 244, 277-78 (1901) (Justice Brown's majority opinion was formative in the creation of the territorial incorporation doctrine finding that the definition of “United States” was limited to states and not territories, essentially, due to the Constitution mentioning states and people of states but with no reference to territories, thereby excluding Puerto Rico under the United States' plenary power. This plenary power, more or less derived from the Territories Clause of Article 4, is found to consist of Congress's power to make all needful rules and regulations respecting the territory, which arises from the right to acquire the territory itself. Later, the Court, in the future *Insular* cases, also ended up adopting the reasoning of Justice White's extensive concurrence in *Downes*, as seen in *Balzac v. Porto Rico*, 42 S. Ct. 343, 346 (1922) (“the *Dorr* Case shows that the opinion of Mr. Justice White of the majority, in *Downes v. Bidwell*, has become the settled law of the court. We conclude that the power to govern territory, implied in the right to acquire it, and given to Congress in the Constitution in article 4, § 3, to whatever other limitations it may be subject, the extent of which must be decided as questions arise, does not require that body to enact for ceded territory, not made part of the United States by congressional action, a system of laws which shall include the right of trial by jury, and that the Constitution does not, without legislation and of its own force, carry such right to territory so situated”)); Cf. Derieux & Alomar, *supra* note 1, at 751 (arguing that the distinction between incorporated territories and unincorporated territories was founded in racism and imperialism, stating, “[i]n *Downes*, Justice White panned extending citizenship to people of ‘an uncivilized race’ ‘absolutely unfit to receive it,’ and quoted approvingly from treatise passages suggesting that conquering peoples ought ‘govern’ ‘fierce, savage, and restless people[s] ‘with tighter reign.’” “And in *De Lima v. Bidwell*, *De Lima v. Bidwell*, 21 S. Ct. 743, 762 (1901), [another *Insular* case], Justice McKenna starkly warned against admitting ‘savage tribes into American Society’”).

of cases,” “[t]oday no scholar defends [them] as correctly decided,’ and even litigants and courts that rely on them today decline to ‘defend their actual reasoning.’”⁸ Thereby, “the *Insular Cases* disreputable and offensive origins have put them in an exceedingly narrow class of Supreme Court decisions with ‘nary a friend in the world.’”⁹ Perhaps most aptly stated by revered Justice Juan R. Torruella in his striking article, The Insular Cases: The Establishment of A Regime of Political Apartheid, “the present legitimacy of the *Insular Cases* is untenable. The system of governance promoted thereunder can no longer be reconciled with a rule of law in which all citizens are entitled to equality.”¹⁰

II. The Insular Cases in Context: A Historical Account and Overview of The Aftermath

⁸ *Id.*, at 753 (expanding upon these notions, both in text and in footnotes 186 and 187); See also Aurelius Inv. LLC v. P.R., 915 F.3d 838, 854-55 (1st Cir. 2019); Cf. Juan R. Torruella, The Insular Cases: The Establishment of A Regime of Political Apartheid, 29 U. Pa. J. Int’l L. 283, 285 (2007) (“contend[ing] that the *Insular Cases* are a display of some of the most notable examples in the history of the Supreme Court in which its decisions interpreting the Constitution evidence and unabashed reflection of contemporaneous politics, rather than the pursuit of legal doctrine”).

⁹ *Id.* (referring to the *Insular Cases* as a “discredited lineage of cases, which ushered the unincorporated territories doctrine” and “hovers like a dark cloud”).

¹⁰ Torruella, *supra* note 8, at 286-87 (striking additionally at the *Insular* cases with a stark comparison to *Plessy v. Ferguson*, 163 U.S. 537 (1896), finding that “[a]s in the instance of the legal framework established by *Plessy*, the *Insular Cases* have had lasting and deleterious effects on a substantial minority of citizens. The ‘redeeming difference is that *Plessy* is no longer the law of the land, while the Supreme Court remains aloof about the repercussions of its actions in deciding the *Insular Cases* as it did, including the fact that these cases are responsible for the establishment of a regime of de facto political apartheid, which continues in full vigor”). For more about Justice Juan R. Torruella, see Sam Roberts, Juan Torruella, Groundbreaking U.S. Appeals Judge, Dies at 87, THE NEW YORK TIMES (Oct. 28, 2020), <https://www.nytimes.com/2020/10/28/us/juan-torruella-groundbreaking-us-appeals-judge-dies-at-87.html> (describing Chief Judge of the United States Court of Appeals for the First Circuit, Juan R. Torruella, as “a groundbreaking Hispanic federal judge in New England who championed the rights of his fellow Puerto Ricans.” Not only was Chief Judge Torruella “the only Hispanic to serve on the First Circuit court in Boston,” he was also “the first and only Puerto Rican to serve on the First Circuit, which covers Main, Massachusetts, New Hampshire and Rhode Island, as well as Puerto Rico.” In addition to his time on the First Circuit, Justice Torruella wrote a book, The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal (1988), in which “he argued that ‘colonial rule and the indignities of second-class citizenship’ could be eliminated not by granting independence, as the United States did to the Philippines in 1946, but ‘by securing for Puerto Rico equality under American law’—including statehood.” Directly affected by the territorial incorporation doctrine, Chief Judge Torruella stated to the Boston University alumni magazine, *Bostonia*, that even he “cannot vote for the president and vice president and [has] no voting representative in Congress simply because [he is] a resident of Puerto Rico,” further elaborating that “[t]he bottom line is that U.S. citizens who live in Puerto Rico have no political equality”); Cf. U.S. CT. OF APP. FOR THE 1ST CIR., Juan R. Torruella, <https://www.ca1.uscourts.gov/juan-r-torruella> (last visited Dec. 31, 2022).

“Today, largely viewed by courts through a formalist, ahistorical lens, and devoid of racial reality, the *Insular Cases* still shape the colonial experience of millions of territorial peoples in the United States.”¹¹ These cases, and their aftermath, arose out of an event that took place over a century ago, the Spanish-American War.¹² As stated by the Honorable Gustavo A. Gelpi, “[i]n 1898, the United States became an overseas empire. With the signing of the Treaty of Paris ending the Spanish-American War, the former Spanish territories of Guam and the Philippines in the Pacific Ocean and Puerto Rico in the Atlantic Ocean came under the American flag.”¹³ The annexation of these former Spanish territories thereby “raised complex constitutional questions” such as whether Congress could hold them “in a permanent state of ‘colonial dependence,’” whether these territories must “stand on equal footing with the pre-1898 territories,” and, ultimately, whether and “[w]hich constitutional provisions applied to America’s newly acquired overseas territories?”¹⁴

In answering these complex constitutional questions, the Court decided twenty-three cases between 1901 and 1922, now known as the *Insular Cases*.¹⁵ These cases, in an attempt to deal with the cumbersome issues at hand, fashioned the territorial incorporation doctrine.¹⁶ This doctrine “created a then-unprecedented distinction between ‘incorporated’ territories on their way to becoming states, and ‘unincorporated’ ones left somewhere in the middle.”¹⁷ Whereby the

¹¹ Susan K. Serrano, Elevating The Perspectives of U.S. Territorial Peoples: Why The Insular Cases Should Be Taught In Law School, 21 J. Gender, Race, and Just. 395, 396 (2018).

¹² Gustavo A. Gelpi, The Insular Cases: A Comparative Historical Study of Puerto Rico, Hawai’i, and the Philippines, The Federal Lawyer, Apr. 2011, at 1.

¹³ Id.

¹⁴ Derieux & Alomar, supra note 1, at 731-32.

¹⁵ Id. at 734.

¹⁶ Id. at 721.

¹⁷ Id. at 733.

Constitution's limitations on the national government applied fully to the incorporated territories, these limitations would only apply partially to the unincorporated territories, such as Puerto Rico.¹⁸

Resting on a doctrine “found nowhere in the Constitution,” the myriad effect of this doctrine and these cases follow persons in unincorporated territories in an unrelenting manner.¹⁹

In concrete terms, that exclusion impacts the everyday lives of the peoples of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Northern Mariana Islands in far-reaching ways—from the political to the economic, and the social to the cultural. Residents of the territories lack political power on the national stage—they cannot vote in U.S. presidential elections and have no voting representatives in Congress. Territorial residents are statutory citizens (except for American Samoans, who are U.S. nationals), and, as some scholars have argued, this citizenship is second-class because Congress can revoke it at any time.²⁰

A. The Court, in *Balzac*, held that residents of unincorporated territories have no Sixth Amendment right to a jury trial.

The consequences of allowing Congress the power to provide different rights to different persons, depending on whether they are within an unincorporated, as opposed to incorporated territory, have affected and continue to affect the lives of these persons in additional peculiar ways.²¹ For instance, after the “Court ruled that the Jones Act, which had conferred U.S. citizenship on Puerto Rico’s inhabitants in 1917, did not operate to ‘incorporate Porto Rico into the United States,’” the Court, in *Balzac v. Porto Rico*, then went on to find that “residents of Puerto Rico could not demand a [Sixth Amendment] trial by jury because ‘[i]t is locality that is determinative of the application of the Constitution, in such matters as judicial procedure, and not the status of

¹⁸ Id.

¹⁹ Id. at 746.

²⁰ Serrano, supra note 10, at 411-12.

²¹ Id. at 409-14.

the people who live in it.”²² Like many of the determinations by the Court at this time, here, the view of the Court had underlying tones of racism and colonialism.²³ As stated by Professor Serrano, “[u]nlike Alaska, which was ‘sparsely settled’ and amenable to settlement by white American citizens, the Court again viewed the Philippines and Puerto Rico as ‘distant ocean communities of a different origin and language from those of our continental people’”; the Court further reasoned that a jury right should not “be imposed on these ‘ancient communities’ with little knowledge of popular government.”²⁴

B. Due to the definition of United States only including the fifty states and the District of Columbia, the residents of unincorporated territories, such as Puerto Rico, suffer discrimination in extent of aid from federal programs to territorial residents.

Similar to the denial of the Sixth Amendment right to a jury trial based on Puerto Rico’s unincorporated status, the Court has also held, in *Harris v. Rosario*, “that if there is a rational basis for doing so, federal programs can provide less aid to territorial residents.”²⁵ Likewise, the Court found, in *Califano v. Gautier Torres*, that “it is constitutional for the Social Security Administration to discontinue Supplement Security Income benefit payments to aged, blind, and

²² *Id.* at 409; See also *Balzac v. Porto Rico*, 258 U.S. 298, 301-10 (1922) (rejecting Balzac’s contention that “he was entitled to a jury in such a case under the Sixth Amendment to the Constitution” and finding that residents in unincorporated territories, such as Puerto Rico, have no Sixth Amendment right to a jury trial).

²³ *Id.* at 409-10.

²⁴ *Id.* at 409.

²⁵ *Id.* at 412; See also *Harris v. Rosario*, 446 U.S. 651, 651-52 (1980) (holding that providing less federal financial assistance through the Aid to Families with Dependent Children program to families in Puerto Rico with needy children than “families with needy dependent children” in states and incorporated territories did not violate the Fifth Amendment’s equal protection guarantee. The Court reasoned that three factors “suffice to form the rational basis for the challenged statutory classification”: (1) “Puerto Rican residents do not contribute to the federal treasury”; (2) “the cost of treating Puerto Rico as a State under the statute would be high”; and (3) “greater benefits would disrupt the Puerto Rican economy”).